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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U.S.
FILED
MAR 2 1972
E. ROBERT SEAVER, CLERK

No. 71-492

LLOYD CORPORATION, LTD.,
Petitioner,

—VS.—

DONALD M. TANNER, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR CERTIORARI FILED OCTOBER 5, 1971
CERTIORARI GRANTED JANUARY 17, 1972

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DOCKET ENTRIES

DATE	PROCEEDINGS
1969	
Mar 7	Filed complaint
7	Issued summons
20	Filed copy summons with Marshal's return
28	Filed stipulation for extension of time (30 days); granted by Clerk (M. Hui, Dep)
Apr 28	Filed answer
June 16	Entered Order setting for pretrial calendar Aug. 18, 1969 S
18	Filed Deposition of Betsy Wheeler, taken June 3, 1969, Portland
Aug 18	Record of PTC
18	Entered Order resetting for pretrial calendar Sept. 15, 1969, under the rule. Parties to have completed pretrial order at this time S
Sept 2	Filed (2) Return on service of writ
Sept 3	Filed Depos of Donald M. Tanner
3	Filed Depos of Susan Roberts
15	Record of pretrial conference
15	Lodged Pretrial Order
15	Entered Order setting for trial week of November 10, 1969 S
Nov 12	Filed Deposition of Richard C. Horn
	Filed Deposition of Clifford P. Boss

DATE		PROCEEDINGS	
1969			
Nov	12	Filed Deposition of Francis M. Pulliam	
	13	Filed Deposition of Charles R. Ford	
	13	Filed and Entered Pretrial Order (11/12/69)	S
	13	Record of trial before the Court	
	13	Entered Order that pltfs' exhibits 1 thru 16 and 28 are received; Exhibits 17 thru 27 are received provisionally	S
	13	Entered Order that deft's exhibits 51 thru 56 and 60 are received; Exhibits 57 and 58 taken under advisement	S
	13	Record of offer of proof of deft re turning in draft cards at Centenary Wilbur Methodist Church	
	13	Entered Order rejecting offer of proof	S
	13	Case to be submitted on merits-briefs to come; pltfs' brief in; deft to and including Nov 27, 1969, to answer and pltfs to and including Dec 5, 1969, to reply	S
	13	Lodged pltf's trial brief	
	13	Lodged deft's trial brief	
	28	Lodged deft's Post Trial Brief	
1970			
Jan	15	FILED and Entered OPINION	S
	30	Filed and entered Declaratory Judgment and Decree signed Jan 27, 1970; pltfs have right to distribute non-commercial handbills in a peaceful and orderly manner, etc; enjoining defts, etc (m1/29/70)	S

DATE		PROCEEDINGS
1970		
Feb	3	Filed Cost Bill
	5	Costs taxed at $1[illegible]7.92 (LD 5 P 116)
		Filed notice of appeal by Lloyd Corporation, Ltd. Counsel notified.
		Filed Bond for costs on appeal.
	16	Filed reporter's transcript of proceedings of November 13, 1969
	26	Filed and entered order allowing defendant to remove all photographs for copying. S
Mar	20	Filed stipulation re corrections in transcript of proceedings dated November 13, 1969

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 69-127

DONALD M. TANNER, BETSY WHEELER and SUSAN ROBERTS,
Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,
Defendant.

CARL R. NEIL
c/o American Civil Liberties Union of Oregon, Inc.
Ninth Floor, Loyalty Building
Portland, Oregon 97204
226-1191
Attorney for Plaintiffs

COMPLAINT

Plaintiffs allege:

I.

Plaintiffs bring this suit to obtain declaratory and injunctive redress for defendant's deprivation, under color of state statute and municipal ordinance, of rights guaranteed to plaintiffs by the First and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction under 28 USC Sec. 1343(3) and (4) and 42 USC Sec. 1983.

II.

Plaintiffs are citizens of the United States; defendant at all times material herein was and now is a California corporation duly qualified and licensed to do business in the State of Oregon.

III.

Defendant is the owner and operator of "Lloyd Center," a shopping center advertised by defendant as the world's largest, situated upon real property owned by defendant consisting of approximately 30 blocks of Holladay's Addition to East Portland, in the City of Portland, Oregon, lying between N.E. Broadway Street on the north and N.E. Multnomah Street on the south and between N.E. Ninth Avenue on the west and N.E. 15th Avenue on the east.

IV.

Within the area described in the foregoing paragraph, the Lloyd Center is presently traversed east and west only by N.E. Halsey and N.E. Weidler and is presently traversed north and south only by those portions of N.E. 10th Avenue and N.E. 14th Avenue lying between N.E. Broadway and N.E. Halsey. By Ordinance No. 101288 duly enacted on November 10, 1954, supplemented by Ordinance Nos. 107641 and 28669 duly enacted on March 20, 1958 and December 6, 1961, respectively, the City of Portland vacated and ceded title to defendant of the following public streets previously traversing the area now occupied by Lloyd Center:

N. E. Clackamas Street from N. E. 9th Avenue to N. E. 15th Avenue;

N. E. Wasco Street from N. E. 9th Avenue to N. E. 15th Avenue;

N. E. 10th, 11th, 12th, 13th and 14th Avenues from N. E. Multnomah Street to N. E. Halsey Street;

N. E. 12th Avenue from N. E. Halsey Street to N. E. Broadway Street.

The public street area so vacated and ceded to defendant consists of approximately 385,000 square feet, or 8.838

acres, of land which is now part of the real property upon Lloyd Center is situated.

V.

Space in buildings of Lloyd Center is leased from defendant and occupied by more than 60 commercial businesses and professional offices, and Lloyd Center includes more than 850,000 square feet of open and covered parking space affording off-street parking for more than 1,000 vehicles. Lessees from defendant and occupiers of space in Lloyd Center include Meier & Frank Company, a retail department store, doctors, dentists, lawyers, one or more bakeries, banks, barber shops, beauty salons, candy stores, carpet and rug dealers, cleaners, coin dealers, insurance agents, jewelers, small loan companies, opticians, pharmacies, portrait photographers, restaurants, shoe repair shops, travel agents, a skating rink, and one or more businesses engaged in sale of the following products and services: office machines and supplies, cosmetics, dancing supplies, donuts, fireplace equipment, furniture, gifts, health foods, hearing aids, high fidelity and stereophonic sound equipment, lamps and lampshades, women's apparel, men's clothing and furnishings, musical instruments, neck-wear, nuts, party supplies, phonograph records, photographic equipment and supplies, picture frames, shoes, sporting goods, toys, typewriters and wines.

VI.

Businesses and professional offices in the two levels of Lloyd Center are reached by and open off of malls and walkways radiating from a central mall to parking areas and to streets; all such malls, walkways and parking areas within Lloyd Center are intended by defendant to be open to the general public.

VII.

At all times since Lloyd Center was constructed, defendant has had and now has in effect a rule and policy forbidding distribution of non-commercial literature to the public in any mall, walkway, parking area or other portion of Lloyd Center intended by defendant for use of the general public, and has enforced said rule and policy by ordering persons violating it to cease distribution of the literature and leave the Lloyd Center and by treating violation of such orders as criminal trespass punishable under a statute of the State of Oregon, ORS 164.460, and an ordinance of the City of Portland, Sec. 16-613 of the Police Code. A true copy of said ordinance is attached hereto as Exhibit A.

VIII.

On November 14, 1968, four persons, including plaintiffs, distributed to passersby at various points along the malls and walkways of Lloyd Center intended by defendant to be open to the general public, copies of an anti-war leaflet which announced a meeting that evening at a church. A true copy of said leaflet is attached hereto as Exhibit B. Plaintiffs' distribution of the leaflet was at all times peaceful and orderly, created no disturbance, and did not interfere with public use of the malls and walkways of Lloyd Center or with access to or egress from any business or professional office in Lloyd Center.

IX.

Uniformed guards employed by defendant ordered plaintiffs to cease distribution of the leaflet anywhere in Lloyd Center. When plaintiffs continued such distribution, they were taken by the guards to defendant's manager and chief of guards, who advised plaintiffs of the above-mentioned rule and policy of defendant, or-

dered plaintiffs to cease distribution of the leaflet anywhere in Lloyd Center and to leave Lloyd Center, and told plaintiffs that if they did not cease distribution of the leaflet and leave Lloyd Center, defendant would cause plaintiffs to be arrested and prosecuted for criminal trespass.

X.

In threatening plaintiffs with arrest and prosecution for criminal trespass, defendant was threatening to invoke against plaintiffs ORS 164.460 and/or Sec. 16-613 of the Police Code of the City of Portland, and defendant would have caused plaintiffs to be arrested, prosecuted and convicted for violation of said statute or ordinance if plaintiffs had not complied with defendant's orders to cease distribution of the leaflet and leave the Lloyd Center. To avoid such arrest and conviction, plaintiffs obeyed the orders of defendant and ceased distribution of the leaflet and left Lloyd Center.

XI.

By reason of the premises aforesaid, defendant acting under color of its aforesaid rule and policy, enforced by statute of the State of Oregon and ordinance of the City of Portland, has deprived plaintiffs of their rights guaranteed by the First and Fourteenth Amendments to the United States Constitution to free speech, freedom of the press and peaceable assembly.

WHEREFORE, plaintiffs pray for redress by a decree:

1. Declaring and adjudging that defendant's policy and rule, as applied to forbid peaceful and orderly distribution of non-commercial literature to the public in the malls, walkways and other areas of Lloyd Center open to the general public and outside areas occupied

for business or professional use, is void and invalid under the First and Fourteenth Amendments to the United States Constitution;

2. Declaring and adjudging that defendant's conduct in enforcing its policy and rule against plaintiffs, as set forth in the complaint, was and is a violation of 42 USC Sec. 1983;

3. Permanently enjoining defendant, its agents, employees and all persons in concert with them, from interfering with peaceful and orderly distribution by plaintiffs or others similarly situated of non-commercial literature to the public in malls, walkways and other areas of the Lloyd Center open to the general public and outside areas occupied for business or professional use;

4. Awarding plaintiffs such other relief as the Court finds just and proper;

5. Awarding to plaintiffs their costs and disbursements incurred herein.

/s/ Carl R. Neil
CARL R. NEIL
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 69-127

DONALD M. TANNER, BETSY WHEELER
and SUSAN ROBERTS,
Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,
Defendant.

GEORGE BLACK, JR.
MILTON C. LANKTON
ROBERT J. MILLER
BLACK, KENDALL, TREMAINE,
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1200 Cascade Building
Portland, Oregon 97204
226-3245
Attorneys for Defendant

ANSWER

FIRST DEFENSE

The Court lacks jurisdiction of the subject matter alleged in the Complaint.

SECOND DEFENSE

The Court lacks jurisdiction of the person of the plaintiffs and of the defendant.

THIRD DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

The Court should refuse to exercise its equity power in connection with the alleged threatened enforcement of state law because no Court of the State of Oregon has determined the questions concerning the plaintiffs' criminal liability that are raised by the matters alleged in the Complaint.

FIFTH DEFENSE

I

The defendant admits that it is a California corporation duly qualified and licensed to do business in the State of Oregon and that it owns and operates Lloyd Center.

II

The defendant is without knowledge or information sufficient to form a belief as to whether or not the plaintiffs are citizens of the United States.

III

The defendant admits that parts of the Lloyd Center are located between N. E. Broadway and N. E. Multnomah Streets on the north and south, and between N. E. 15th and N. E. 9th Avenues on the east and west in Holladay's Addition to East Portland.

IV

The defendant admits that Lloyd Center is traversed by N. E. Halsey, N. E. Weidler, N. E. 10th and N. E. 14th Avenues; that portions of N. E. Clackamas and Wasco Streets and portions of N. E. 10th, 11th, 12th, 13th and 14th Avenues were vacated and that in exchange therefor the defendant conveyed land of equal

area to the City of Portland; and that the land so vacated is now part of the property upon which Lloyd Center is situated.

V

The defendant admits that space in Lloyd Center is leased to more than sixty businesses and professional offices; that Lloyd Center includes more than 850,000 square feet of open and covered parking space; and that lessees in the Lloyd Center include various mercantile, professional and service establishments which deal in a variety of products and services.

VI

The defendant admits that persons whose identities are unknown to the defendant sought to distribute anti-war leaflets on defendant's private property at Lloyd Center on or about November 14, 1968; and the defendant alleges that it is without knowledge or information sufficient to form a belief as to whether such persons were the plaintiffs.

VII

Except as so admitted, the defendant denies the allegations of the plaintiffs' Complaint.

SIXTH DEFENSE

The relief prayed for in the plaintiffs' Complaint, if granted, would deprive the defendant of its property and property rights without due process of law in violation of the Constitution of the United States of America.

SEVENTH DEFENSE

The distribution of handbills by the plaintiffs on and from the defendant's private property bore no relation, directly or indirectly, to the defendant or any of its

tenants or properties or any of the businesses or activities conducted in or on said Lloyd Center; said distribution was not consonant with the use to which said private property was actually put and was attempted without the defendant's permission and against its wishes.

EIGHTH DEFENSE

Plaintiffs' ability to communicate their desired information and ideas in full accordance with their constitutional rights would have been, and could be, accomplished by distribution of said handbills on and from property, other than the defendant's private property, in the immediate vicinity and elsewhere.

NINTH DEFENSE

That plaintiff and the particular handbills which they sought to distribute on and from defendant's private property at the time and place complained of in the Complaint, advocated, aided, counselled and abetted the evasion and noncompliance with the Selective Service laws and the Internal Revenue laws of the United States of America; that defendant should not be required to permit the use of its private property for any such purpose.

TENTH DEFENSE

The handbills sought to be distributed by plaintiffs on defendant's property were of a character offensive to many persons and likely to lead to retaliatory action and disturbance to the detriment of the peace and quietude of the premises of defendant and its tenants and the interests of their patrons.

ELEVENTH DEFENSE

In this case, plaintiffs do not come into this Court with clean hands.

The defendant prays for a judgment dismissing the plaintiffs' Complaint and awarding to the defendant its costs and disbursements incurred herein.

BLACK, KENDALL, TREMAINE,
BOOTHE & HIGGINS

/s/ George Black, Jr.
GEORGE BLACK, JR.
Attorneys for the Defendant

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 69-127

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PRETRIAL ORDER

As a result of a pretrial conference heretofore held at which plaintiffs were represented by Carl R. Neil, their attorney, and defendant was represented by Robert J. Miller, of its attorneys, the following pretrial order was framed.

I.

NATURE OF PROCEEDINGS

This is a suit for a declaratory judgment and an injunction under the Civil Rights Act, 42 USC Sec. 1983, in which it is alleged that the defendant, acting under alleged color of state statute and municipal ordinance, deprived the plaintiffs of rights claimed by the plaintiffs to be guaranteed to them by the First and Fourteenth Amendments to the United States Constitution, which allegations and claims are denied by the defendant.

II.

JURISDICTION

The plaintiffs contend that this Court has jurisdiction irrespective of diversity of citizenship or amount in controversy under 42 USC Sec. 1983, and 28 USC Sec. 1343 (3). The defendant denies that this Court has jurisdiction of the claim made by the plaintiffs.

III.

AGREED FACTS

The following facts have been agreed upon by the parties and require no proof:

1. The plaintiffs are citizens of the United States. The defendant Lloyd Corporation, Ltd., is a California corporation duly qualified and licensed to do business in the State of Oregon and is the owner and operator of the Lloyd Center shopping center that is situated in Holladay's Addition to East Portland in the City of Portland, Oregon.

2. On November 14, 1968, a number of persons, including the plaintiffs, distributed to passersby at various points along the malls and walkways of the privately

owned property of the defendant in Lloyd Center, certain anti-war leaflets, copies of which are Exhibits 1 and 2. Such distribution of literature occurred without permission of the defendant. Security Officers employed by the defendant told the plaintiffs and the others so distributing said leaflets to cease such distribution on and from the privately owned property of the defendant in Lloyd Center, and that if they desired to make further distribution, to make such distribution from the public streets and sidewalks in the Center. Employees of the defendant advised the plaintiffs that if they did not cease distribution from the privately owned portions of Lloyd Center, they could be subject to arrest. Such distribution was then continued by the plaintiffs and others from the public streets and sidewalks in Lloyd Center. No arrests were made and no warrant for arrest was requested or applied for by the defendant.

3. Lloyd Center is a retail shopping center with off-street parking facilities. It lies between N. E. Broadway Street on the north and N. E. Lloyd Boulevard on the south and between N. E. 9th Avenue on the west and N. E. 16th Avenue on the east. It is traversed east and west by N. E. Weidler, N. E. Halsey, N. E. Multnomah and N. E. Holladay Streets and north and south by N. E. 15th Avenue. It is also bordered by N. E. 10th Avenue, N. E. 11th Avenue, N. E. 13th Avenue and N. E. 14th Avenue and partially traversed by N. E. Wasco and N. E. Clackamas Streets, all of which said streets and avenues are public streets of the City of Portland, Oregon. The defendant's properties in Lloyd Center are shown on a map which is Exhibit 3 and the area is depicted on the aerial photographs which are Exhibits 4 and 5. The defendant is the owner of fee title to all of the land upon which such Lloyd Center shopping center facilities are situated.

4. Within Lloyd Center, defendant owns and maintains covered and open parking areas, malls and walk-

ways on the mall level and walkways and stairways leading from and to different levels, to interior and exterior parking areas and to public streets and sidewalks; a skating rink that is open to patrons who pay a fee for admission; elevators, escalators, stairways and bridges to facilitate movement of pedestrial traffic; gardens, flower plantings, statuary, murals and various works of art and architecture within the Center, and benches, directories, information booths and other facilities therein for the convenience of shoppers.

5. Lloyd Center includes more than 850,000 square feet of open and covered parking space affording off-street parking for more than 1,000 vehicles. Space in buildings of Lloyd Center is leased from the defendant and occupied by more than 60 commercial businesses and professional offices which deal in a variety of products and services.

6. Some business and professional offices in Lloyd Center can be reached only through one or more of the interior malls and walkways, while other businesses and professional offices in Lloyd Center can be entered either from exterior sidewalks or from one or more interior malls and walkways.

7. The parking lots maintained by the defendant in Lloyd Center are accessible by driveways from public streets. All public streets bordering Lloyd Center are abutted by public sidewalks. All driveways leading to and from parking areas owned by the defendant cross such public sidewalks and vehicles exiting the parking lots owned by the defendant and entering the public streets are required by law to stop before entering such public streets.

8. Lloyd Center is accessible by public bus transportation. Persons arriving by bus alight from buses onto

the publicly owned sidewalks abutting the defendant's property. Pedestrians entering the Lloyd Center shopping areas from outside Lloyd Center must cross public sidewalks.

9. Employees of the defendant have requested persons to cease distribution of literature from defendant's privately owned property in Lloyd Center and have asked such persons to go to public sidewalks to make such distribution.

10. The defendant employs a staff of armed Security Officers who wear uniforms similar, but not identical, in appearance to those of Portland City Police Officers. All such Security Officers employed by the defendant hold commissions from the City of Portland as special police officers of the City of Portland which invest them with "full police authority." Exhibit 6 is a copy of the standard form letter by which the defendant applies on behalf of its Security Officers for such commissions. Exhibit 7 is a copy of the commission of Clifford Boss, Chief of the defendant's Security Officers.

11. On February 7, 1962 and on December 8, 1964, the defendant issued instructions to the Lloyd Center Security Officers concerning the handling of offenses at Lloyd Center. Such instructions are Exhibits 8 and 9.

12. At all times material in this case, there was in full force and effect an ordinance of the City of Portland codified as Section 16-613 of the Police Code. Exhibit 10 is a true copy of that ordinance.

IV.

PLAINTIFFS' CONTENTIONS

Plaintiffs contend and defendant denies as follows:

1. The main portion of Lloyd Center consists of a single interconnected structure of several levels situated

on what were formerly 18 city blocks, and is bounded by N. E. Halsey on the north, N. E. 9th Avenue on the west, N. E. Multnomah Street on the south and N. E. 15th Avenue on the east. This portion of Lloyd Center is hereinafter referred to in Plaintiffs' Contentions as the "main part of Lloyd Center."

2. By Ordinance No. 101288 duly enacted November 10, 1954, supplemented by Ordinance Nos. 107641 and 28669 duly enacted on March 20, 1958 and December 6, 1961, respectively, the City of Portland vacated and ceded title to defendant of the following public streets previously traversing the area now occupied by Lloyd Center:

N. E. Clackamas Street, from N. E. 9th Avenue to N. E. 15th Avenue;

N. E. Wasco Street from N. E. 9th Avenue to N. E. 15th Avenue;

N. E. 10th, 11th, 12th, 13th and 14th Avenues from N. E. Multnomah Street, to N. E. Halsey Street;

N. E. 12th Avenue from N. E. Halsey Street to N. E. Broadway Street.

The public street area so vacated and ceded to defendant consists of approximately 385,000 square feet, or 8.838 acres of land which is now part of the real property upon which Lloyd Center is situated. Prior to this vacation and cession to defendant, the portions of the streets above mentioned were open public streets.

3. The great majority of businesses and professional offices leasing space from defendant in Lloyd Center are situated in the main part of Lloyd Center, and the greatest vehicular and pedestrian use of Lloyd Center occurs there.

4. The parking areas, malls and walkways within Lloyd Center are the functional equivalents of public streets and sidewalks.

5. Defendant has kept the interior malls and walkways of Lloyd Center open to the general public at all times, and has not restricted their use solely to shoppers or persons transacting business with defendant or its tenants. While defendant has required its permission for use of malls and walkways of Lloyd Center for purposes other than general pedestrian movement, defendant has invited and permitted without charge political rallies for presidential candidates in the central mall of the main part of Lloyd Center, and has allowed political and other groups to use the auditorium in the lower level of the main part of Lloyd Center. Defendant has also permitted without charge the following uses by private, non-commercial organizations of space in the malls and walkways of Lloyd Center:

a. Solicitation of funds during the Christmas season by bell ringers of the Salvation Army and Volunteers of America;

b. Sale of "Buddy Poppies" by the American Legion;

c. Displays by the Boy Scouts of America;

d. Concerts by college and high school musical groups and other entertainment.

Lloyd Center maintains a public information booth in the central mall of the main part of Lloyd Center. Among other things sold or distributed to the public at this booth have been Rose Festival pins, and pamphlets on the Portland Zoo and on the Sanctuary of Our Sorrowful Mother, a religious shrine also known as The Grotto. Defendant has also invited outside groups to hold Vet-

erans Day ceremonies and football rallies in the central mall of the main part of Lloyd Center.

6. Plaintiffs' distribution of literature (P. Exs. 1 and 2) on malls and walkways of Lloyd Center on November 14, 1968 was consonant with other uses of those areas of Lloyd Center permitted by defendant.

7. At all times material in this case, defendant has had and now has in effect a rule and policy forbidding distribution of literature of any type to the public in any mall, walkway, parking area or other portion of Lloyd Center intended by defendant for use of the general public. Employees of defendant have on many occasions instructed persons to cease distribution of literature in these and all other areas within Lloyd Center.

8. The distribution of leaflets (P. Exs. 1 and 2) by plaintiffs and others within Lloyd Center on November 14, 1968 was at all times peaceful and orderly, created no disturbance, and did not unreasonably restrict public use of the malls and walkways of Lloyd Center or access to or egress from any business or professional office in Lloyd Center.

9. Instructions issued by defendant to its security guards on February 7, 1962 and December 8, 1964 (P. Exs. 8 and 9) were in effect as to handling of persons distributing literature within Lloyd Center on November 14, 1968.

10. In ordering plaintiffs and others to cease distribution of the leaflets within Lloyd Center (see Agreed Facts, para. 2), defendant's security guards stated or implied to plaintiffs and others that they would be arrested if they continued to distribute the leaflets within Lloyd Center, and were acting in accordance with defendant's standing instructions (P. Exs. 8 and 9) and its policy against distribution of any literature within Lloyd Center without its permission.

11. By its instructions to its security guards (P. Exs. 8 and 9) and by the stated or implied threat of defendant's security guards, who are special police officers of the City of Portland and have full police authority of the City of Portland within Lloyd Center, to cause the arrest of plaintiffs and others distributing leaflets within the malls and walkways of Lloyd Center on November 14, 1968 if they disobeyed orders of the security guards to desist, defendant acted under color of the criminal trespass statute of the State of Oregon (ORS 164.460) and/or the criminal trespass ordinance of the City of Portland (P. Ex. 10) to enforce its policy against distribution of any literature within the malls and walkways of Lloyd Center or elsewhere within Lloyd Center.

12. Plaintiffs and others distributing leaflets on November 14, 1968 ceased distribution within Lloyd Center in order to avoid arrest and prosecution under the criminal trespass statute or ordinance as threatened by defendant's security guards.

13. Restriction of distribution of literature to exterior public sidewalks adjacent to Lloyd Center prevents distribution to a large number of persons who arrive by automobile and park within Lloyd Center and therefore do not walk upon the exterior sidewalks adjacent to Lloyd Center.

14. Plaintiffs' distribution of the leaflets (P. Exs. 1 and 2) on November 14, 1968 would have been the exercise of rights of free communication protected by the First and Fourteenth Amendments to the United States Constitution against infringement by outright prohibition or other unreasonable regulation, if such distribution had occurred on public sidewalks.

15. Whether or not consonant with other uses of those areas permitted by defendant, plaintiffs' distribution of the leaflets on November 14, 1968 on malls and walkways of the main part of Lloyd Center, as well as upon exterior public sidewalks adjacent to Lloyd Center, was also

within the protection of the First and Fourteenth Amendments to the United States Constitution against infringement by outright prohibition or other unreasonable regulation.

16. In prohibiting plaintiffs from orderly and peaceful distribution of non-commercial leaflets on malls and walkways of Lloyd Center and threatening to cause plaintiffs to be arrested if they continued such distribution there or elsewhere within Lloyd Center, defendant, under color of state statute and/or municipal ordinance, deprived plaintiffs of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution to free speech, freedom of the press and peaceable assembly, in violation of 42 USC Sec. 1983.

17. Plaintiffs are entitled to redress by a decree:

a. Declaring and adjudging that defendant's policy and rule, as applied to forbid peaceful and orderly distribution of non-commercial literature to the public in the malls, walkways and other areas of Lloyd Center, open to the general public and outside areas occupied for business or professional use, is void and invalid under the First and Fourteenth Amendments to the United States Constitution;

b. Declaring and adjudging that defendant's conduct in enforcing its policy and rule against plaintiffs, under the circumstances of this case, was and is a violation of 42 USC Sec. 1983;

c. Permanently enjoining defendant, its agents, employees and all persons acting in concert with them, from interfering with peaceful and orderly distribution by plaintiffs or others similarly situated of noncommercial literature to the public in malls, walkways and other areas of the Lloyd Center open to the general public and outside areas occupied for business or professional use.

18. Plaintiffs deny the contentions of defendant.

V.

DEFENDANT'S CONTENTIONS

The defendant contends as follows:

1. The defendant's rights, existing under the laws of the State of Oregon and guaranteed by the Fifth Amendment to the Constitution of the United States, include the right to possession of its private property in Lloyd Center and the right to determine the uses to which such property shall be put.

2. The defendant uses its property in Lloyd Center exclusively as a shopping center for the business purpose of obtaining rental income and not for the purpose of providing a forum to anyone for the dissemination of matter, information or ideas not related to said purpose.

3. The defendant has not opened, dedicated or otherwise devoted its private property in Lloyd Center to public use. It has retained all rights, powers and privileges of a private property owner with respect to such property. The defendant has so informed its patrons and the public and all persons coming upon its private property in Lloyd Center by maintaining at all entrances thereto signs that state:

> "NOTICE—Areas In Lloyd Center Used By The Public Are Not Public Ways But Are For The Use Of Lloyd Center Tenants And The Public Transacting Business With Them. Permission To Use Said Areas May Be Revoked At Any Time. Lloyd Corporation, Ltd."

4. In furtherance of the said business use of its private property, the defendant and its tenants have invested substantial sums of money to create and maintain attractive and convenient facilities, and to bring events and other things of interest to Lloyd Center, and for

publicity and public relations and advertising and other matters, all for the purpose of attracting shoppers, retail customers and patrons to Lloyd Center and to motivate such persons to make retail purchases from the defendant's tenants.

5. The plaintiffs, in seeking to make free use of the defendant's private property as a forum for distribution of anti-war leaflets, are attempting for their own purposes to take advantage of conditions that have been created solely for the aforesaid business purposes by the defendant and its tenants at great expense.

6. The defendant, in furtherance of the business use of its private property, is legally and equitably privileged to prevent and exclude from its property in Lloyd Center all things, conduct and acts that in any way tend to distract persons or shoppers from making retail purchases or that in any way are offensive to retail customers or potential retail customers and it has endeavored at all material times so to do.

7. The defendant has retained, and has, the legal right to exclude from its private property in Lloyd Center persons who use or attempt or intend to use such property as a forum for the publication or dissemination of ideas and information which such ideas and information are not related to or consonant with the use to which the defendant has actually put its private property.

8. The distribution of handbills by the plaintiffs on and from the defendant's private property in Lloyd Center bore no relation, directly or indirectly, to the defendant or any of its tenants or properties or to any of the businesses or activities conducted upon such property. Said distribution was not consonant with the use to which said private property was actually put.

9. The distribution of leaflets sought to be made by the plaintiffs would, if permitted, interfere with and be harmful to the business of the defendant and its tenants and would interfere with the use to which the defendant has put its property.

10. There is no constitutional provision or interpretation, and there is no law, that requires an owner of private property used for business purposes as a shopping center to permit distribution of leaflets that are not related to the owner of its tenants or properties or otherwise not consonant with the uses to which such private property has actually been put.

11. The statements made by the plaintiffs and the anti-war leaflets sought to be distributed by them upon the defendant's private property were not related to any activity, establishment or other matter related to the Lloyd Center or any part thereof, but were exclusively in regard to matters not related thereto.

12. The plaintiffs' ability to communicate their desired information and ideas in full accordance with their constitutional rights would have been and could be accomplished by distribution of said leaflets on and from property, other than the defendant's private property, in the immediate vicinity and elsewhere, including distribution to persons within Lloyd Center and persons entering and leaving Lloyd Center, from public streets and sidewalks and other public property within and adjacent to Lloyd Center. In the circumstances existing in this case, there is no justification for infringement of the defendant's constitutionally protected rights as the owner of this private property.

13. There is no constitutional provision or interpretation, and there is no law, that requires an owner of private property used for business purposes as a shop-

ping center to permit distribution of leaflets on such property when such distribution can be effectively accomplished elsewhere.

14. A court order requiring the defendant to permit the distribution sought to be made by the plaintiffs would constitute a taking of the defendant's property and property rights without just compensation and without due process of law.

15. The statements and leaflet distribution sought to be made by the plaintiffs are of a controversial nature offensive to many persons and likely to incite retaliatory action and disturbance to the detriment of the peace and quietude of the defendant's private property and its tenants and the interests of their patrons and retail customers and to the defendant's loss and damage.

16. The defendant and its employees and agents have a right, protected by the First Amendment to the United States Constitution, to request the plaintiffs and others seeking to distribute handbills, to leave the defendant's private property and to inform such persons that if they do not leave they will be trespassers and subject to arrest.

17. At the times and places complained of in the complaint, there was no arrest, or warrant for the arrest of any of the plaintiffs and there was no action under color of any statute or custom of a state and the court lacks jurisdiction of the subject matter alleged in the complaint.

18. No court of the State of Oregon has determined the questions raised by the matters alleged in the complaint concerning the plaintiffs' criminal liability as trespassers and the court should abstain from enjoining the alleged threatened enforcement of state law.

19. The United States Supreme Court has established a doctrine requiring the abstention of federal courts from

enjoining threatened enforcement of state law when no state court has theretofore ruled upon the questions of the scope or applicability of such state law or upon the constitutional questions applicable thereto.

20. This court has no jurisdiction or power to enjoin a threatened enforcement of state statute by state officials unless this application by the plaintiffs is heard and determined by a district court of three judges.

21. This court should not lend its aid to the plaintiffs in their aiding, counseling, advocating and abetting the violation of the Selective Service and Internal Revenue laws of the United States as shown by the handbills that the plaintiffs sought to distribute and should not compel the defendant to make its private property available for any such purpose.

22. The complaint fails to state a claim upon which relief can be granted.

23. The defendant denies the plaintiffs' contentions and each thereof and also denies the materiality and relevancy thereof.

24. A decree of this court should be entered dismissing this case for want of jurisdiction and if the court should determine that it has jurisdiction, denying the relief requested by the plaintiffs and each and every part thereof and declaring and adjudicating that the defendant is privileged to prohibit any and all handbilling, speeches or similar activity upon its private property or any part thereof that bears no relation to the shopping center purpose for which said Lloyd Center is used and maintained by the defendant or that is not otherwise consonant with that purpose.

VI.

ISSUES

1. Does the court have jurisdiction of the subject matter of this case?

2. Does the Complaint state a claim upon which relief can be granted?

3. May the court, under the circumstances of this case, abstain from granting an injunction until such time as a court of the State of Oregon has determined the questions concerning the plaintiffs' criminal liability as trespassers; if so, should the court do so?

4. Does the court have jurisdiction or power to grant an injunction under the circumstances of this case without the application therefor being heard by a district court of three judges?

5. Has the defendant deprived the plaintiffs of constitutional rights?

6. If the defendant has deprived the plaintiffs of any constitutional right, has it done so under color of law within the purview of 42 USC § 1983?

7. Would the granting of the relief requested by plaintiffs be a taking of the defendant's property or property rights without due process of law or just compensation?

8. If the court grants declaratory and/or injunctive relief, what should be the scope and effect thereof?

VII.

The identity and authenticity of the following exhibits are admitted by the parties, but other objections to admissibility are reserved.

PLAINTIFFS' EXHIBITS

1.	Leaflet distributed by plaintiffs at Lloyd Center on November 14, 1968
2.	Leaflet distributed by plaintiffs at Lloyd Center on November 14, 1968
3.	Map of Lloyd Center
3-A.	Map of City of Portland
4.	Aerial photograph of area including Lloyd Center
5.	Aerial photograph of area including Lloyd Center
6.	Copy of defendant's form letter requesting special police Commission for Lloyd Center security guards
7.	Copy of Commission of Captain Clifford Boss as special police officer of the City of Portland
8.	Defendant's memorandum to Lloyd Center security guards dated February 7, 1962
9.	Defendant's memorandum to Lloyd Center security guards dated December 8, 1964
10.	Ordinance of the City of Portland, Section 16-613 of the Police Code
11-A. through 11-V.	22 photographs of exterior and interior malls of "main" part of Lloyd Center, taken for plaintiffs in October and November, 1969
12.	Memorandum of Captain Clifford Boss to Mr. Horn dated November 14, 1968
13.	Deposition of Richard Horn
14.	Deposition of Captain Clifford Boss

15. Deposition of Francis M. Pulliam
16. Deposition of Charles R. Ford
17. Letter of Lloyd Center dated August 24, 1960
18. Letter of Lloyd Center dated November 21, 1967
19. Letter of Lloyd Center dated August 29, 1960
20. Letter of Lloyd Center dated September 15, 1964
21. Letter of Lloyd Center dated January 2, 1964
22. Letter of Lloyd Center dated September 24, 1964
23. Letter of Lloyd Center dated August 15, 1962
24. City of Portland ordinance Nos. 101288 (November 10, 1954), 106640 (September 18, 1957), 107641 (March 20, 1958) and 28669 (December 6, 1961) relating to vacation of public streets within what is now Lloyd Center
25. Letter of Lloyd Corp. to Mayor and Council of Portland dated September 10, 1954
26. Report of Portland city engineer dated July 28, 1954
27. Diagram of public streets vacated by ordinances of the City of Portland listed as Exhibit 24
28. Ordinance of the City of Portland, Administrative Code Section 3-407

DEFENDANT'S EXHIBITS

51. Deposition of Donald M. Tanner
52. Deposition of Betsy Wheeler
53. Deposition of Susan Roberts

54. Written statement of Donald M. Tanner dated November 26, 1968

55. 22 photographs of Lloyd Center

56. Lloyd Center lease form provision applicable to common area, operation and right-of-way

57. Resistance notes dated April 15, 1969

58. Undated letter to Robert from Betsy received in about June, 1969

59. Resolution adopted by Lloyd Center Merchants Association dated February 11, 1969

VII.

ORDER

The foregoing constitutes the pretrial order and shall not be amended except upon consent of the parties or upon order of the court to prevent manifest injustice.

DATED this 13th day of November, 1969.

/s/ Gus J. Solomon
United States District Judge

/s/ Carl R. Neil
CARL R. NEIL
Attorney for Plaintiffs

/s/ Robert J. Miller
ROBERT J. MILLER
Of Attorneys for Defendant

TRANSCRIPT OF RECORD

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

IN TWO VOLUMES

No. ———

LLOYD CORPORATION, LTD.,
Petitioner,

vs.

DONALD M. TANNER, BETSY WHEELER
and SUSAN ROBERTS,
Respondents.

VOLUME TWO

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 69-127

DONALD M. TANNER, BETSY WHEELER and SUSAN ROBERTS,
Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,
Defendant.

November 13, 1969
Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

BEFORE:

The Honorable Gus J. Solomon, Chief Judge.

APPEARANCES:

Mr. Carl R. Neil, of Attorneys for Plaintiffs;
Messrs. Robert Miller and George Black, of Attorneys for Defendant.

[2] THE COURT: Go ahead, Mr. Neil.

MR. NEIL: The plaintiffs are ready, your Honor. I would like to advise the Court one of the plaintiffs, Miss Wheeler cannot be here until 4:00 when she gets off work because she has been instructed she would not have her job any longer if she left before 4:00 p.m. Other than that, we are ready to proceed.

Does your Honor want to hear opening statements? I am prepared to waive.

THE COURT: As I told Mr. Miller, instead of listening to all these witnesses about which there may or may not be any dispute, you can tell me what the witnesses are going to testify to. I will then ask Mr. Miller if that is true. If it is true, then we would go to the next witness.

MR. NEIL: All right, your Honor. Do you want me to start that way, your Honor?

THE COURT: Yes.

MR. NEIL: May I offer some evidence before I do so?

THE COURT: Yes.

MR. NEIL: We will offer Plaintiffs' Exhibits 14 through 16, which are the depositions of Mr. Boss, a security guard, Francis Pulliam and Mr. Ford. We are agreeable to their testimony going in by deposition rather than by oral testimony.

THE COURT: Any objection?

MR. MILLER: No objection.

[3] THE COURT: They are admitted.

MR. NEIL: We also offer all of Plaintiffs' Exhibits 1 through 12 and 17 through 28.

THE COURT: Any objection?

MR. MILLER: We do have objections, your Honor. We have no objection to 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 —excuse me, we have no objection to 12. We have no objection to 11-A through 11-V. We have no objection to 28.

We do have objection, your Honor, to Exhibits 17, 18, 19, 20, 21; 22, 23, 24, 25, 26 and 27, upon the ground they are irrelevant to any material issue in the case and that they are immaterial.

THE COURT: You admit to their authenticity?

MR. MILLER: Yes, we do.

THE COURT: I will admit those provisionally.

(Whereupon Plaintiffs' Exhibits 1, Leaflet distributed by Plaintiffs at Lloyd Center on November 14, 1968;

2, Leaflet distributed by Plaintiffs at Lloyd Center on November 14, 1968; 3, Map of Lloyd Center; 3-A, Map of City of Portland; 4, Aerial photograph of area including Lloyd Center; 5, Aerial [4] photograph of area including Lloyd Center; 6, Copy of Defendant's form letter requesting special police commission for Lloyd Center security guards; 7, copy of Commission of Captain Clifford Boss as special police officer of the City of Portland; 8, Defendant's memorandum to Lloyd Center security guards dated February 7, 1962; 9, Defendant's Memorandum to Lloyd Center security guards dated December 8, 1964; 10, Ordinance of the City of Portland, Section 16-613 of the Police Code; 11-A through 11-V, 22 photographs of exterior and interior malls of "Main" part of Lloyd Center; 12, Memorandum of Captain Clifford Boss to Mr. Horn dated November 14, 1968; 13, Deposition of Richard Horn; 14, Deposition of Captain Clifford Boss; 15, Deposition of Francis M. Pulliam; 16, Deposition of Charles R. Ford were received in evidence. [5] Plaintiff's Exhibit 17, Letter of Lloyd Center dated August 24, 1960; 18, Letter of Lloyd Center dated November 21, 1967; 19, Letter of Lloyd Center dated August 29, 1960; 20, Letter of Lloyd Center dated September 15, 1964; and 21, Letter of Lloyd Center dated January 2, 1964; 22, Letter of Lloyd Center dated September 24, 1964; 23, Letter of Lloyd Center dated August 15, 1962; 24, Letter of City Ordinance Nos. 101288 (November 10, 1954), 106640 (September 18, 1957), 107641 (March 10, 1958) and 28669 (December 6, 1961) relating to vacation of public streets within what is now Lloyd Center; 25, Letter of Lloyd Corporation to Mayor and Council of Portland dated September 10, 1954; 26, Report of Portland City Engineer dated July 28, 1954; 27, Dia-

gram of public streets vacated by ordinance of the City of Portland listed as Exhibit 24 and 28; [6] Ordinance of the City of Portland, Administrative Code Section 3-407 were received in evidence provisionally.)

MR. NEIL: Your Honor, my first witness would be Mr. Horn, Manager of Lloyd Center. I propose to cover a number of things with him. Shall I outline what I plan to cover with him and what he would testify to?

THE COURT: Let me hear about your own witnesses.

MR. NEIL: My own witnesses will testify to—

THE COURT: Who are they?

MR. NEIL: Mr. Tanner.

THE COURT: What does he do?

MR. NEIL: Part-time laborer.

THE COURT: He is not connected with the defense?

MR. NEIL: Pardon me?

THE COURT: He is not connected with the defense? He is one of your own witnesses?

MR. NEIL: He's one of the plaintiffs, right. There are three plaintiffs, Mrs. Wheeler, Mrs. Roberts and Mr. Tanner.

They will testify that they handed out leaflets within Lloyd Center on November 14, 1968. Two of them, Mr. Tanner and Mrs. Roberts handed out Plaintiffs' Exhibit 1.

THE COURT: Let me see Plaintiffs' Exhibit 1.

Where were they standing?

[7] MR. NEIL: At various places within the mall within what I call the main part of Lloyd Center. That is the area between that part of Lloyd Center which lies between Multnomah and Halsey, Ninth and 15th.

THE COURT: They handed out these leaflets and then what happened?

MR. NEIL: I would like to state Mrs. Wheeler handed out both leaflets; the other two just Plaintiffs' Exhibit 1.

Defendant's uniformed security guards approached them and told them to cease distributing these within Lloyd Center, that they could distribute them if they wanted on the exterior, on the public sidewalk outside of Lloyd Center; that if they continued to distribute this literature within Lloyd Center that they would be trespassers and that the defendant would cause their arrest.

In order to continue distributing and to avoid arrest, these plaintiffs did in fact go to the exterior sidewalk.

THE COURT: Mr. Miller, is that correct?

MR. MILLER: If your Honor please, Mr. Black had intended to make the opening statement for us.

THE COURT: All right.

MR. BLACK: Yes, your Honor. As I understood you to say, they would testify the police officers said what to them? I didn't get that.

MR. NEIL: Told them to cease distributing literature [8] within Lloyd Center; that they could distribute it if they wished on the exterior public sidewalk outside of Lloyd Center; that if they continued to distribute within Lloyd Center that they would be arrested or a warrant would be issued for their arrest for trespassing.

MR. BLACK: I don't believe we can agree that they were told they would be arrested. They were told, I think, within the opinion of the Lloyd Company, they would be trespassers. But, they were not arrested. And, as I understand the testimony, they were not told that they would be arrested.

THE COURT: You admit everything else except the fact the officer told them they would be arrested or a warrant of their arrest would be issued.

MR. NEIL: I would call the Court's attention to—

THE COURT: Maybe we are just wasting our time. Why don't you go back there. They are not going to arrest them. Is your point that they can pass out leaflets and will not be molested? If that is the case, what are we here for?

MR. BLACK: I believe, if your Honor please, we are trying the incident that happened on November 14th. You are putting your finger on one of the important questions of this case; and that is, whether by raising the incident that happened on November 14th and the questions related to it, whether the plaintiffs can thereby put the Lloyd Corporation into a position where they must declare themselves with regard to every situation [9] that would occur in the future. There is a serious question in my mind as to whether the plaintiffs can properly bring the Lloyd Corporation here and require it to make such a statement with regard to private property.

THE COURT: I think this is kind of a foolish defense very frankly. What are you trying to do? Are you trying to tell them: "Go out tomorrow, if you win, and get yourself arrested so the Lloyd Corporation can be sued properly?"

MR. BLACK: No, I don't want to bring that about as you can well understand. But,—

THE COURT: If these officers were so nice and gentle with them and said, "Go away, we are not going to arrest you. You are just trespassers" what are we here for?

MR. BLACK: Well, we have been operating there for nine years, if your Honor please; and we have never caused an arrest of anybody.

Our officers, I think the evidence will show, are directed not to arrest anybody for matters such as handbilling and things of that character. So, it seems to me under the circumstances, it is asking a little more than is proper to ask me to admit or to determine the question now as to what would happen in the future. There are all kinds of handbilling.

One of the principal issues in this case is the nature of this particular handbilling.

Also another issue in the case is the question of whether [10] when we asked them to do it on the public streets,

whether that was a proper and reasonable request which they complied with.

THE COURT: You are not going into that question. I know you permitted President Nixon to talk out there. You permitted other people to talk there. Maybe they didn't pass out any handbills. That is not the question he is asking you to admit.

The fact is: He wants to know whether you permit some people to do it and don't permit plaintiffs to do it. That is the only thing that we have to determine now.

I thought if the officer did in fact tell the plaintiff he would be arrested, it would raise the issue and we could determine the whole thing in this proceeding. That is all.

MR. NEIL: May I call the Court's attention to a part of a paragraph of the agreed facts which reads as follows:

> "Employees of the defendant advised the plaintiffs that if they did not cease distribution from the privately owned portions of Lloyd Center, they could be subject to arrest."

MR. BLACK: We agreed to that.

MR. NEIL: I agree to that also. I contend it was stronger than that. I agree that it went that far.

MR. BLACK: Then, the matter is covered by the agreed statement of facts.

MR. NEIL: I submit to your Honor that the question of arrest was somewhat stronger than they are stated here.

[11] THE COURT: I will let you put the evidence on.

MR. NEIL: Very well. The other thing I would prove by these witnesses, your Honor, is that the distribution at all times was peaceful and obstructed no one and caused no interference with the normal uses of Lloyd Center.

THE COURT: Is that admitted?

MR. BLACK: The question of normal use is a pretty broad term. It was peaceful. There is no question raised

about it being peaceful. As to whether it interferes with the normal use of Lloyd Center is another matter.

One of the positions of the defendant in this case is that Lloyd Center is designed and constructed and maintained on the basis that it does not permit hand billing or distribution of literature on matters, if your Honor please, that has nothing to do with the Center.

THE COURT: All right. I will permit you to put on evidence on that too.

MR. NEIL: All right fine, your Honor.

THE COURT: It is admitted they didn't bump anybody or push anybody?

MR. BLACK: That's right.

THE COURT: The question of normalcy is whether, if handbills are passed out, whether that interferes with people entering the stores?

MR. BLACK: Or the customer motivation that we devote the [12] premises towards, which is the broader question. You say "interfering with people going into the stores" did your Honor mean physically?

THE COURT: Yes.

MR. BLACK: Well, of course, that would depend on where they handbill and what the handbilling was.

THE COURT: I think one of the questions we are going to have to determine, and it may require testimony is: Can you waive for certain purposes and not waive for all purposes; isn't that one of the issues?

MR. BLACK: Well, your Honor—

THE COURT: I am one of the regular customers out there, so I know the place. I have been out there when they have had old cars all over the place, these antique and ancient cars. It is pretty hard to walk around there because they are there so much in the center court.

I was wondering whether you can permit antiques and ancient cars and you permit certain political organiza-

tions to use the auditorium and at the same time say, "We will not permit other organizations the same privilege."

MR. BLACK: I think my answer to that at this stage of the proceedings would be: So far as the antique cars and things of that nature is concerned, that the Lloyd Corporation has a classification of the things that it believes build business for the tenants, the merchants in that area.

[13] I think the testimony will show, if your Honor please, that there are a number of things that are done which they believe do increase this customer motivation.

Now, with regard to the question of handbilling, particularly handbilling that has nothing to do with the operation of the center, like the anti-war handbilling, I believe the evidence will show over the nine year period, that has always been disallowed or prohibited. Bars have not been let down on that at any time.

THE COURT: All right. I had hoped we could get down to the very legal questions involved without having a lot of controversy about the facts. Apparently that is not going to be possible.

So, have you any other witnesses besides your plaintiffs?

MR. NEIL: Our plaintiffs and Mr. Horn is all.

THE COURT: Go ahead and call Mr. Horn.

MR. NEIL: Mr. Horn, will you take the stand, please.

[14] RICHARD C. HORN was thereupon produced as an adverse witness in behalf of the plaintiffs, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Will you state your full name, your address and your occupation, please.

THE WITNESS: Richard C. Horn, 3030 N.E. Alameda Terrace; Manager of Lloyd Center; Portland, Oregon.

THE CLERK: Be seated, sir.

THE COURT: You are the Manager of Lloyd Center and have been for a number of years, haven't you?

THE WITNESS: Yes, your Honor, from the outset.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. NEIL:

Q When did the Lloyd Center open, Mr. Horn?

A August, 1960—July 28, 1960.

Q You are the top official in Lloyd Center; isn't that right, in the City of Portland?

A Yes, sir.

Q And, you are a member of the Oregon State Bar?

A Yes, sir.

Q And, have been since how long?

A Nineteen years.

Q Does the Lloyd Center maintain a uniform staff of [15] security guards?

A Yes.

Q That staff is about 12 men; is that right?

A Yes, 12 regulars and extras when we need them.

Q And, about four men per shift?

A Yes.

Q Is it true that the Lloyd Corporation applies to the City for commissions for all of these men as special city police officers?

A Yes, sir.

Q And, all of the guards do, in fact, hold such commissions?

A Yes.

Q Mr. Black commented about arrests that these guards may have made. In the past, these guards have made arrests in the Lloyd Center for things other than handbilling, have they not?

A I recall one at least where it was a matter of loitering and annoying the girls and the property on the ice rink and the skaters. That was the one instance I can recall.

Q Shoplifting?

A Shoplifting, complaint of the merchants.

Q A lot of arrests have been made or warrants sworn out for offenses other than handbilling; is that right?

A No. I say it could be confined pretty much to shoplifting on the complaints of the merchants; shoplifting or stolen credit cards and that sort of thing.

[16] Q Now, coming to November 14, 1968, you talked to two of these plaintiffs, Mr. Tanner and Mrs. Roberts about their handbilling on that day, did you not?

A Yes.

Q You talked to them after they had already been told by these security guards that they could not handbill within Lloyd Center; is that right?

A I did because I wanted them to understand possibly the problem.

Q And, you told them, did you not, that they could not handbill within Lloyd Center?

A Yes.

Q Did you tell them further if they persisted in handbilling either they would be arrested or a warrant would be obtained for their arrest?

A No, sir.

Q You did not tell them that?

A No, sir. They had already been told. I was only trying to explain, hoping they would understand why we didn't want them to do it.

Q You knew, in fact, at least Mr. Tanner had been told?

A No, I did not, no.

Q Didn't you have a memorandum from Mr. Boss that told you about what he told Mr. Tanner?

A There was one which I saw just the other day. I had [17] forgotten it.

Q Didn't that state in that memorandum—show the witness, if you will, Plaintiffs' Exhibit No.—

THE COURT: Who is Mr. Boss?

MR. NEIL: The chief of the security guards.

THE COURT: Where is he?

MR. NEIL: His deposition is admitted, your Honor.

THE COURT: Go ahead.

MR. NEIL: Show the witness Plaintiffs' Exhibit 12.

Q You agree that Mr. Boss told you he told Mr. Tanner that a John Doe warrant would be issued for his arrest—

A I agree that this note was sent to me.

Q So, you were aware if you read it that Mr. Boss had said something about arrest to Mr. Tanner, right?

A I should have been, yes, sir.

Q You had a discussion with both Mr. Tanner and Miss Roberts as to the reasons for the rule, I take it?

A Yes.

Q And, you told them—

A Not a complete explanation. But, one particular explanation people seem to understand and that is: If this is permitted by numerous bill passers, it litters the place and you couldn't keep it clean. I didn't go into the ramifications.

Q You explained there would be a littering problem if [18] handbilling was permitted, right?

A Yes.

Q And, the discussion even got legalistic with Mr. Tanner, didn't it? Didn't you discuss the *Logan Valley* case from the Supreme Court of the United States?

A He said he had a right to be here. I said, "We don't think so." He said, "Well, the *Logan Valley* case says we do." I said, "We don't think this applies to a situation such as this."

Q Okay.

A That's all.

Q And, your enforcement of the rule against these plaintiffs and these particular leaflets had nothing to do with the contents of the leaflet; is that correct?

A Yes. Basically, we don't permit any, no matter what it would say. It could have been going the other direction, urging people to enlist for the draft or not evade the draft, we wouldn't have permitted that either.

Q So, you didn't bar them from handbilling because of what the leaflets said?

A No, if I really thought about it, it might have been one more thing that I wouldn't have liked.

Q Did you in fact observe any littering going on from the leaflets?

A No.

Q Besides these two plaintiffs, there were several people [19] handing out these leaflets in the Lloyd Center?

A I saw them only after they were out on the sidewalk.

Q After they were on the sidewalk, they were there for quite a period of time?

A Yes.

Q Did you see any littering?

A I didn't look out there.

THE COURT: What do you mean by the statement: You wouldn't permit handbills to be handed out?

THE WITNESS: Well, your Honor, because of the annoyance we feel would be subjecting the customers to constantly have handbills pushed at them and because most people are courteous and in many instances they would take it and discard it, if we had a handbiller every 20 or 30 feet in the center, you could see what it would cause.

THE COURT: I would like to know what you mean by "permit": Assume that a person said, "I am going to

continue to distribute handbills." What does that mean? Would you say go ahead; but I am not permitting it?

THE WITNESS: No, I would not say, "Go ahead." I would go back and probably talk to counsel as to what we should do.

THE COURT: Who?

THE WITNESS: Counsel. And, we would ask for an injunction against the distribution and possibly a warrant for arrest for trespassing. I don't really know, your Honor.

[20] THE COURT: It didn't get that far on this particular occasion?

THE WITNESS: No. I haven't had the occasion in nine years. Everyone has always left. When we requested it, they do it. So, we haven't been up against the problem.

THE COURT: All right.

Q (By Mr. Neil) One more question on littering. Did you, in fact, see any of the handbills in question here lying around the Lloyd Center any place on November 14th?

A No. I didn't inspect the whole premises. I didn't see any in the area.

Q You didn't see any?

A Not within that particular area, no.

Q Did you see any within the area anywhere within Lloyd Center?

A I didn't inspect the whole center.

Q Did you observe on November 14th, any hostile public reaction to the distribution of these leaflets?

A One—Some lady asked what they were distributing. I said, "Handbills urging people not to accept the draft cards."

Q That lady came up to your office?

A I saw her down by the escalator down by the Aladdin. What she said was, "I am glad I didn't know what

it was. I don't know what I would have told them because my boy is flying a helicopter in Vietnam."

[21] Q She saw you down in one of the malls and came out?

A She just asked me what the problem was or what they were distributing.

THE COURT: I don't think the matter of littering is really important. Aren't there several Supreme Court decisions on that?

MR. NEIL: Yes, there are. I just wanted to bring out that there wasn't littering here in any event.

Turning now to the general policy in operation of the Lloyd Center, it's true that the malls and walkways within the center are open 24 hours a day; is that right?

A Well, they aren't physically closed such as putting a gate across, no. But, they are not—when people are there after hours, they are watched. And, if it is too late at night, they are told the places are closed and they should leave.

Q If I wanted to wal' through the center malls of Lloyd Center at 3:00 in the morning, would anyone stop me?

A Depending on who the officer was on duty as to what he is supposed to do. But, they would have made inquiry and followed you to see what you are doing.

Q Officer Ford testified in his deposition that if I went through the center malls of the center, I would be closely observed, but no one would stop me. Is that statement unfair?

A No, because Officer Ford has not been a regular man on the midnight shift. But, again, I don't know what every other [22] officer would do either.

THE COURT: How would that prove or disprove any issue in this case.

MR. NEIL: Nothing except to prove—

THE COURT: Let's get down to the issue that will prove something.

MR. NEIL: All right.

THE COURT: Let me ask you a few questions, Mr. Horn:

Do you have an auditorium at the Lloyd Center?

THE WITNESS: Yes, sir.

THE COURT: Is that used by many organizations without any cost?

THE WITNESS: No, sir. It's rented.

THE COURT: You rent it out?

THE WITNESS: Yes, sir, we do make a couple of exceptions, one being the Cancer Society.

THE COURT: I didn't hear you.

THE WITNESS: One of them being the Cancer Society. We let them meet once a year and the Boy Scouts can have it once a year and the Camp Fire Girls once a year with no charge. Everyone else pays a rental fee.

THE COURT: But there are some public organizations, I think the Zoo used it one year, didn't they?

THE WITNESS: I believe, your Honor, about the first year in operation, I think we asked them to bring in some animals [23] because of the attraction, is all I remember.

THE COURT: So, there are some organizations that use the facilities without paying any fees. And, there are other organizations that are required to pay a fee for the use of the facilities?

THE WITNESS: There are I think two or three, Cancer, Boy Scout groups, Girl Scouts use it once a year, yes, sir, without charge. The rest of them pay.

THE COURT: Within the past year or so, wasn't there a dispute between the School Board and the teachers in which the facilities of the Lloyd Center were used on sort of a regular basis by the union and by the School Board?

THE WITNESS: Yes, sir. It was, but they paid for it. And, when they wanted it again, we told them if they didn't take better care of the premises, we wouldn't even rent it to them.

THE COURT: So you do make a distinction between people who use the auditorium facilities either for pay or not for pay and those people who come onto the premises in the mall and want to use it for their own purposes?

THE WITNESS: No, because the auditorium is private property. But, we share the malls. We say that the malls of the Lloyd Center are private property.

Your Honor, so we allowed the presidential candidates that you mentioned awhile ago. We do that for one reason and that is great public interest. It is secondary at least and maybe [24] first, it brings a great many people to Lloyd Center who may shop before they leave.

THE COURT: I mentioned earlier those ancient cars. Do you remember those exhibitions?

THE WITNESS: Yes, sir.

THE COURT: They were there on Saturdays and Sundays.

THE WITNESS: Friday nights and Saturdays. And, I think we pay the Antique Car Dealers Association I think 600 to $700 to bring the cars in for display because we think it brings people. And, when we bring people, we bring shoppers.

THE COURT: In other words, sometimes you bring in various organizations and perhaps persons into the malls for the purpose of encouraging trade?

THE WITNESS: Oh, yes, sir. The purpose of most—perhaps of all our activities in the center is to bring people and make them enjoy it while they are there, and hopefully that they will get the habit and want to come back.

THE COURT: Is there anything further?

MR. NEIL: Yes.

Q (By Mr. Neil) Let's go into some other activities that you have allowed on the malls without charge.

You have, for example, allowed sale of buddy poppies by the American Legion; is that right?

A Yes.

Q That was within the mall area?

[25] A Yes, sir.

Q You have allowed solicitation of funds at Christmastime?

A Excuse me. The sale of poppies is correct; but, they are confined to selling at a table at about three locations. They could not walk around and solicit.

Q Three locations in the mall?

A Yes.

Q You have allowed solicitation of funds at Christmastime by bell ringers of the Salvation Army and Volunteers of America?

A We had them for two reasons; One of them being, we think it's a recognized charity, because everyone knows the Salvation Army is taking care of the poor and wayward people.

Secondly, we think it actually adds to the Christmas atmosphere.

THE COURT: Actually what?

THE WITNESS: Adds to the Christmas atmosphere that people have been brought up by in hearing the bells at Christmastime.

Q (By Mr. Neil) You have allowed those bell ringers everywhere in the malls?

A No, at specified locations. And, they were told at the outset that if they do not conform in any respect that they will have to leave and will not come back.

Q If it adds to the Christmas atmosphere, wouldn't you rather have them in more than three locations?

[26] A I didn't say three, sir on this one.

THE COURT: I don't see what that has to do with it. He is just telling you what has happened.

Q (By Mr. Neil) All right, your Honor. You have had Veterans Day observance put together by outside veterans located in the malls; is that right?

A We invited them.

Q They occurred there?

A Oh, yes.

Q They didn't pay a fee, did they?

A No, no.

Q You have had Boy Scout displays in the malls many times, isn't that right?

A Oh, yes. We try hard to get this every year because people like it.

Q No charge for that?

A No. We'd pay them if we had to to get them.

Q You have had presidential candidates and election rallies in the malls on occasions, haven't you?

A Yes, sir.

Q Even primary candidates election rallies where you have gotten more than one candidate on each side, haven't you?

A No, sir.

Q Well, let me ask you this—

A Excuse me.

[27] Q Speaking of the presidential primaries—

A Yes, sir, we had McCarthy—Mr. McCarthy, Mr. Kennedy—

Q You have had football rallies in the Lloyd Center, have you not?

A We have invited them. We want them.

Q Pardon?

A We want them.

Q You have had them in the malls, right?

A Sure, because we want them.

Q It would be fair to say, wouldn't it, that the rallies such as the election rallies and football rallies certainly obstruct and impede traffic much more than these plaintiffs did?

A I don't think that is the complete point.

Q Answer my question if you will. Isn't that true?

A Will you repeat the question please?

THE COURT: The question is: Have these presidential candidate rallies and football rallies been more obstructive to traffic than these plaintiffs?

MR. NEIL: Pedestrian traffic within the Lloyd Center.

THE WITNESS: It would in the central plaza itself; not in the malls.

Q Where they occurred?

A We want them.

THE COURT: Mr. Horn, answer the questions. You are a [28] lawyer. I thought your son was a lawyer. But, you are a lawyer also.

THE WITNESS: He is a better one. I never practiced, your Honor. I never practiced law.

THE COURT: Just answer his questions. Mr. Black and Mr. Miller are both admitted to the Bar. They know how to ask questions.

THE WITNESS: All right, sir.

Q (By Mr. Neil) At various times at Lloyd Center, there has been an information booth where things like the Rose Festival pins have been sold, right?

A They've been available to purchasers, yes, sir.

Q And, literature has been handed out or available for distribution at that booth on such things as the zoo, the Grotto; right?

A For tourists.

Q Pardon?

A For the benefit of tourists.

Q But, those things have occurred; is that right?

A Yes.

Q You testified, I think in your deposition, you have turned down some organizations—outside non-profit organizations from using the malls?

A Many many of them, right.

Q The example you gave in your deposition was like the [29] March of Dimes and the Hadassah?

A I could give you many many more if you would like.

Q Okay. How do you draw the distinction—what in your mind is the distinction between those you allow to use the malls and these outside non-profit organizations and those you don't allow to use them?

A Well, we—I readily concede that the Veterans is an exception to our policy. Maybe, the better we feel people who go through what they have gone through for this country, people are sympathetic with them generally and would not object.

Q You, in fact, take into account whether you think they are charitable or not; is that one factor?

A No, because many of them are. It's just a matter of limiting it. We simply couldn't have them all. We made one or two exceptions, true.

Q Let me ask you if you didn't testify at page 12 —may I approach the witness, your Honor?

THE COURT: No. I think we have gone over that long enough. I don't think by adding 15 more organizations that we are going to establish a principle more than what you have done.

MR. NEIL: I only wanted to take up the distinction, your Honor, as to why he allowed some and turned down others.

THE COURT: Read him what he said before.

MR. NEIL: I will ask you if you didn't testify as follows in your deposition taken May 29, 1969 at page 12, line 18:

[30] "We do not feel that every time anybody comes to the center that they should be solicited or heaven knows what, things that may be charitable or not charitable, and we cannot determine always what is and what isn't."

THE WITNESS: Yes.

MR. NEIL:

"Q It is pretty much, then, your judgment as to which causes you approve of and which you don't; is that right?

A Judgment plus the fact maybe we like one particular group such as the Veterans, the hospitalized veterans, we think they should have some help.

Q You like them better than, for example, you like Hadassah; is that right?

A Well, no, but Hadassah, that particular thing is a—something not generally as—not generally accepted as a charitable thing by most of the people, by the majority of the people, something foreign to this area."

Did you give that testimony at that time?

A Yes, sir.

Q Now, I want to ask you a couple of questions about the layout of Lloyd Center. I have been referring to the area between Multnomah, Halsey, 9th and 15th, as the main part of Lloyd Center. You used the term center. You know what area I am talking about, [31] don't you?

A Uh-huh.

Q Do you?

A Yes, sir.

Q I might ask that you be handed the aerial photograph which is Plaintiffs' Exhibit 4.

THE COURT: What is the purpose of these questions?

MR. NEIL: I want to establish that the area in which the plaintiffs sought to leaflet occupies the majority of the geographic area of Lloyd Center and has the greatest pedestrian and auto traffic and that sort of thing.

THE COURT: Where were they distributing the literature?

MR. NEIL: Within what I call the main part of Lloyd Center; that is the single complex bounded by Halsey, Multnomah, 9th and 15th. It can be shown on this photograph that Mr. Horn has.

THE COURT: Is that where Meier and Frank is?

THE WITNESS: They were down where Meier and Frank store is.

THE COURT: I know where that is.

MR. NEIL: All right.

THE COURT: That's right near the skating rink.

THE WITNESS: Right.

Q (By Mr. Neil) Almost all of it is right around in here. And, the mall is right around the skating rink?

[32] A Yes.

Q It is true that what I call the main part of Lloyd Center occupies more than one half of the geographic area of all of Lloyd Center?

A No, sir. I don't believe so, because you talk about the largest part here that runs about 20 acres in size. I think Lloyd Center is something like 50 acres.

Q Show the witness Exhibit 3, if you will, which is a map of Lloyd Center.

(Document handed to witness.)

Counsel agreed, Mr. Horn, the area on that map which is the heavy black line, I think you can see it there is the Lloyd Center.

A Yes.

Q You agree with that?

A Yes, sir.

Q Isn't it true that the area I have described as the main part of Lloyd Center is more than half the geographical area of Lloyd Center?

A Looks like it on the map. I know we have 50 acres. The largest part of the center there consists of only about 20.

Q Lloyd Center Corporation has some property that isn't within Lloyd Center; is that right?

A I am talking about the 50 acres we are supposed to have in the—I haven't gone out and measured it.

[33] THE COURT: I think we are wasting a lot of time.

MR. NEIL: In the pretrial order, we have agreed—

THE COURT: If you have agreed upon it, go ahead to something else.

Q (By Mr. Neil) Are the majority of the businesses and stores, professional offices that are tenants, a majority of them are located within what I call the main portion of Lloyd Center?

A Yes, sir.

Q Would it be a fair statement to say that the greatest or a greater shopper pedestrian and automobile parking occur within the main part of Lloyd Center than other parts of Lloyd Center?

A Yes.

MR. NEIL: That's all.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. MILLER:

Q Mr. Horn, what basis do you use for distinguishing—first, let me ask you how many charitable groups have you permitted to solicit in Lloyd Center?

A All I can think of at the moment is the American Legion, poppies and Salvation Army and the Volunteers of America.

Q The Salvation Army and Volunteers of America being at Christmastime?

A Yes.

[34] Q Approximately how many groups have asked you for permission to do similar things?

A Like I say, 30 or 40 or 50, any of those would be numerous times, particularly in the early years of the center.

Q Did you give the others permission?

A No, sir.

Q Why not?

A Because we felt—these included petition signers for the sales tax—against the sales tax; fluoridation of water and what have you, market surveys, college and high school kids selling tickets; Beaver baseball, Oregonian and Journal selling, it's just that the customers do not want to be annoyed. We firmly believe that the customers that are invited are distracted. It isn't the pleasant shopping that we should have in Lloyd Center.

Q How often during the year do you have an information booth in Lloyd Center?

A We have it during the summer months. And, 90 percent of it is for the purpose of tourists that we have.

Q How is it staffed?

A We have an information girl who tells tourists how to get out of town and where the various—the Columbia River is and how to get to the coast and where they can buy things at the various stores.

Q Does she tender any of these leaflets about the zoo and [35] other tourist attractions?

A When they ask what there is to see in Portland, she would say: There is a zoo; there is a pamphlet on the zoo.

Q Does she give these things only to people who ask for them?

A Oh, yes.

Q Does she—

A They are there under the shelf. And, we don't pass them out.

Q What candidates for; what political office have you had in Lloyd Center?

A The political offices I can think of in the first year or two of the election, every county commissioner; every city commissioner; every legislator, we had no problem in recent years because they know we do not want it. So, then it's been down to the presidential candidates that we have invited recently. We recently had the Democratic and Republican Parties. We told them this space was available and we would like to have Mr. Kennedy, Mr. McCarthy, Mr. Nixon. We would like to have them. We would like to have them use our facilities.

Q Did you give permission to the first category candidates that you talked about, the commissioners and the like to come there and campaign?

A No, no. We asked them not to do it.

Q What political candidates have you given permission to [36] come there and talk?

A The presidential candidates.

Q The President of the United States?

A Tom McCall was running for governor, he went down to the ice rink to a women's club where they were skating and was giving them cards. We told him he couldn't do it. So, he left.

THE COURT: I didn't hear what you said. Tom McCall did what?

THE WITNESS: Went down to the ice rink where we had a women's club skating to meet the ladies and to politic. We told him he had to leave, he couldn't do

it. We didn't permit it. So it was the presidential candidates only.

THE COURT: How about the mayor, have you ever turned him down too?

THE WITNESS: Who?

THE COURT: Mayor Schrunk.

THE WITNESS: He never asked. But, we wouldn't have let him. We would have told him.

THE COURT: Even though he determines whether you are going to have special police out there or not? (laughter)

THE WITNESS: Well, I would take it upon myself to tell him he couldn't do it.

Q Do you specifically invite the presidential candidates?

A Yes, sir, to the Central Committee in Oregon of both parties.

[37] Q How frequently have you had the presidential candidates?

A We had the three the last time. We had Mr. Rockefeller one time, John Kennedy another time.

THE COURT: I think we are getting far afield. We have covered all that about the presidential candidates. If you want to talk about something, find out what veterans' organizations he has permitted there and which ones he hasn't. I think the point was made that charitable organizations were permitted if Mr. Horn liked them. If he doesn't like them, they don't come in. For example, if he likes the American Legion, that's fine. If he doesn't like the Veterans of Foreign Wars, he doesn't permit them to sell poppies. That is what I understood. If I am incorrect, you go ahead and bring out what veterans' organizations he likes and which he doesn't like and which he permits and which he doesn't permit.

Q (By Mr. Miller) Which veterans?

A I have no feeling for the American Legion. I

have a feeling for the people that are up in the hospital. I think every citizen does have. The veterans, if anyone deserves some comfort and support by the people of the United States, they are the people who have given something that the rest of us have not given.

As far as the American Legion is concerned, if they would come in and be at one certain post, we say, "You can come in on three tables. You cannot solicit. You cannot run around [38] and ask the people for anything." Three tables have been allocated for that.

Q How many days a year have you permitted those poppies?

A I am not sure, maybe a Friday or Saturday once a year; maybe only one day; I don't remember.

Q But, it was either one day a year or one or two days a year each consecutively?

A Yes. The American Legion come down and wanted to do something else, we wouldn't permit them.

Q Have you permitted any other veterans organization to solicit there?

A No, no. I am not a member of any veterans organization either. I have no feeling for them other than the sympathy for those who have been ill and who have been hurt.

THE COURT: How about the Rose Festival tables; have you permitted them to sell buttons in the malls?

THE WITNESS: No, sir, your Honor, because the Rose Festival sent out these plaques, you know, with buttons and people can buy them if they wanted to. The last year, I think it was the first time we had one on the information booth. Anybody wanting to could pick one off and, of course, give the girl a dollar for it. We have no selling by anyone. The Oregonian and Journal doesn't sell in the Lloyd Center.

The Boy Scouts and Camp Fire Girls don't sell candy or cookies there either.

[39] THE COURT: You don't permit it?

THE WITNESS: No, sir.

THE COURT: The only exception is the poppies?

THE WITNESS: Yes, poppies and the Salvation Army, poor old Salvation Army.

THE COURT: What kind of Salvation Army?

THE WITNESS: The very poor Salvation Army.

THE COURT: I didn't hear what you said.

THE WITNESS: The very very poor Salvation Army.

THE COURT: Are there two kinds of Salvation Armies?

THE WITNESS: No, sir, they are poor.

THE COURT: Go ahead.

Q (By Mr. Miller) Why do you have events such as the antique car display at Lloyd Center?

THE COURT: I think he has already explained that before. He pays them $600 to get the people there on Saturdays and Sundays.

THE WITNESS: Uh-huh.

Q Have others in the past sought to distribute handbills in Lloyd Center prior to November 14, 1968?

A Many of them.

Q What occurred on those occasions?

A We asked them to please go out to the public area in the center which is out on the sidewalk; and, they have all done it. There have been no problems.

Q Would you describe the area between 9th and 15th and [40] Multnomah and Halsey Streets in the Lloyd Center.

A That is the largest part of the center. It is just one building really. We have big structures there that except for several structures that go down through the structures; the rest of the stores are on top of the structure, which is part of the building.

Q How far is the sidewalk where you asked these people to handbill from the Lloyd Center businesses?

A Right smack up against it, adjacent. You don't have to walk across anything, it's right there.

Q What businesses are right adjacent to those sidewalks?

A Newberry's, Pay 'N Save Drugs, First National Bank, Rotary Bakery, McCall Oil, Goldberg's Restaurant, Portland Federal Savings and Loan.

THE COURT: That is just on one side. But on the other side facing the Sheraton Hotel and the park, there is quite a distance.

THE WITNESS: Only Meier and Frank is the only one there. Meier and Frank store fronts on the sidewalk.

Q (By Mr. Miller) What facilities—What do you call the area between the stores at Lloyd Center?

A Malls or common areas.

Q Are they referred to as common areas in your lease?

A Yes.

Q What do those common areas consist of in way of [41] facilities?

A Well, there are two ten-foot covered sidewalks. And, right in the middle of it, is another 30 feet. Then, there are planters of flowers, statuary trees and benches.

Q Are there any elevators?

A Elevators, escalators.

Q Bridges?

A Bridges.

Q What part of the area is covered?

A Well, I think the whole center—most of the largest part of the center is covered. The parking area down below, something like 20 acres is covered. The common area, the malls, 20 feet of the 50 are enclosed plus the bridge, plus the area over the ice rink and some of the malls that go out to the side are completely covered.

THE COURT: How does this go to prove or disprove any issue in this case?

I am amazed, Mr. Miller. I asked you yesterday about this case. I thought all of these undisputed matters could be stipulated to. You have been asking him questions and Mr. Neil has been asking him questions about which there is absolutely no dispute at all and taking up the time of the Court when it could have been written out the way I asked you to. I told you you ought to put this down in writing. Maybe you are too busy to handle cases in the Federal Court, Mr. Miller. Maybe you have got [42] too important clients. We have been here close to an hour talking about irrelevancy all the time and nothing of a controversial nature. The only controversial matter has been whether he actually threatened them with arrest or didn't threaten them with arrest. Everything else has been admitted. And yet you have been wasting time, both of you. This is not the rule of this Court, and you know it.

MR. BLACK: May I say this—

THE COURT: I didn't talk to you, I talked to Mr. Miller.

MR. BLACK: I didn't mean it that way. I meant there is a statement of agreed facts in the pretrial order. And, that is as far as we could go. It is our feeling that in view of the decisions, particularly the *Logan Valley* case that it is essential in this case to show the nature of the malls that are in question. And, in order to do that, we just have to have the testimony because it wasn't admitted.

THE COURT: Was it asked to be admitted?

MR. BLACK: I don't know. I can't answer that.

THE COURT: Mr. Miller, did you ask Mr. Neil to admit the testimony that he is now giving about the description of the malls and the distance from the various parts?

MR. MILLER: That was gone into to some extent, your Honor. And, we have a statement that these were facilities for the convenience of the customers. And, that wasn't admitted.

[43] THE COURT: What wasn't admitted?

MR. MILLER: That those facilities were for the convenience of customers.

THE COURT: Those are the conclusions. He has been talking about the facts most of the time.

MR. MILLER: If your Honor would like to continue with respect to the reasons and some testimony about the maintenance cost of these areas that are paid for by the—

THE COURT: Tell me the case upon which you rely concerning maintenance costs. Why is maintenance cost important?

MR. MILLER: We believe—

THE COURT: Give me the case upon which you rely.

MR. MILLER: In the *Logan Valley* case, your Honor, the *Amalgamated Food Employees Union* vs. *Logan Valley Plaza*, there was a great deal of discussion by the United States Supreme Court of the United States in that case.

THE COURT: Tell me the facts of the case.

MR. MILLER: The plaintiff in the case—there were two plaintiffs, the Logan Valley Shopping Center and Weis Market.

The Logan Valley Center owned the Logan Valley Center. Weis owned the real estate in which he operated a supermarket. There were two stores existing in that shopping center at the time of the controversy.

THE COURT: What was the controversy?

MR. MILLER: The labor union members came to the center [44] and picketed the Weis Market.

The Logan Valley Center and the Weis organization petitioned the courts of Pennsylvania for an injunction

to enjoin those pickets from trespassing upon the Logan Valley and the Weis lands.

The courts of Pennsylvania enjoined those pickets from doing so. That was affirmed by the Supreme Court of the State of Pennsylvania.

THE COURT: What was the picketing about?

MR. MILLER: It was about the non-union character of the Weis employees, your Honor.

The Court in that case—the United States Supreme Court in that case spent a great deal of time, a number of pages discussing the character of the center and how it was that those pickets dealing directly with the matters going on in the Weis store could not do so adequately except within the center near the Weis store.

Here, this handbilling deals with the matter not related to something going on within Lloyd Center. And, it is our position that it can be done adequately from the public sidewalks which abut the Lloyd Center.

It is our position it can be done anywhere else in this city or in the country for that matter and that it's not necessary in this case as it was in the *Logan Valley* case for these plaintiffs to be permitted to come into the mall area upon which [45] our clients and its tenants invest very substantial sums of money every year for the purpose of maintaining statuary and flowers and to keep the place pleasant for shoppers to bring them back. We think it is different from Logan Valley. We think it is different for those reasons because of the things that Mr. Justice Marshal talked about in the *Logan Valley* case.

THE COURT: Mr. Miller, this is a question of free speech in this case. This is not a question of a union. The question here is: Can one organization say to the American Legion, "We will permit you to come on our premises." and then say to the Veterans of Foreign Wars, "We are not going to permit you to come onto our premises."

The question seems to be: When you give one organization certain rights and privileges, have you opened up the premises to all organizations? That seems to be the question. It is not how many feet of space there is for people to walk on and where can the people who frequent this mall be best reached. I don't see that at all. I think you have gone into the character of the premises very well. I know this place. I have been on there a hundred times. If you are doing it for my purpose, it is not necessary for you to do it.

MR. MILLER: We think it is important to show the tenants have a very important interest here too. I want to demonstrate that by asking some questions about it.

THE COURT: What case are you going to rely on for that? [46] What is the authority?

MR. MILLER: I don't have the specific case.

MR. BLACK: Would your Honor permit me to make a very short statement?

THE COURT: Mr. Black, perhaps you don't know how we operate here—

MR. BLACK: I asked your Honor's permission to make a short statement.

THE COURT: I realize you are the head of the firm. If you don't want Mr. Miller to say anything, that is perfectly all right. But, there is going to be one person asking the questions and one person trying the case. If you are dissatisfied with Mr. Miller, you are the head of that office, you can stop him any time and I will let you finish.

MR. BLACK: He is my lawyer. I am very satisfied. I thought maybe I could assist the Court in connection with the *Logan Valley* case. I have read it as careful as possible. There were a couple of questions your Honor asked that I would like to answer them. May I say a word about it?

THE COURT: All right. Then, you don't ask any more questions.

MR. BLACK: I just wanted to say this: Your Honor asked Mr. Miller a moment ago what case he relied upon asking about the comparisons between the situation at the center and public streets.

[47] We have a brief that was served on us by Mr. Neil in which one of the cases he relies on is the case of *Marsh* against *Alabama*.

In this case of *Logan Valley*, which I believe is the leading case on this entire question, one of the questions —the principal question in that case is whether this Weis Market of the Logan Valley Plaza was comparable to a city street.

One of the cases that it relied upon was the case of *Marsh* against *Alabama* which is a case that is relied upon by Mr. Neil.

We think in the presentation of the defense of this case that it is important for the Court to know and it is an essential element to determine whether the mall at this particular Lloyd Center is comparable to a public street. We think that in the Supreme Court of the United States that Mr. Thurgood Marshall devoted several pages to that discussion. So, that is the reason we felt that it's necessary to show the condition of the Lloyd Center, you see.

THE COURT: I think you have shown it adequately. I think that in the future, Mr. Miller, when you are coming here to try a case and I ask you to set down in writing what your witnesses are going to testify to, you do it.

MR. MILLER: Yes.

THE COURT: Then we will not be wasting all this time.

I am surprised at Mr. Neil not complying with this [48] request that I made yesterday.

MR. NEIL: Your Honor, I want to say in all defense of myself, I submitted many more agreed facts than I was able to get agreement on. If you will look at my contentions in the pretrial order you will see what I asked them to agree to.

MR. MILLER: In that regard also, your Honor, we were willing to submit statements of what our witnesses were going to say. In a very brief conference the other day, it was decided that would not be done. We were prepared to do so, but it wasn't done.

THE COURT: All right.

Q (By Mr. Miller) What work is done in maintaining the malls, Mr. Horn, the common area?

A Well, in the cleaning first, we sweep the malls every morning about 4:30. We have men all day sweeping up to get the debris up. We have three gardeners who do nothing but landscaping and maintaining the flowers and trees. We go beyond to maintain the painting, anything that needs painting and lot striping, policing and taking care of the elevators.

Q How much money is spent in that manner?

A Oh, in excess of $350,000 a year.

Q Who pays for it?

A The tenants of Lloyd Center.

Q Is that—

A Including Lloyd Corporation. We are tenants also. We [49] rent office space.

Q Is that paid for in the form of additional rent?

A Yes, sir.

Q Mr. Horn, has any merchant complained to you of handling in the malls?

A In the past, yes, many times, in the early days; we haven't had any to speak of in the last few years.

Q Why do you try to keep handbilling out of the malls?

A Well, I think, as I probably said awhile ago, because I think it's annoying to customers. We think it disturbs the happy comfortable atmosphere I think we have created. I think it is a distraction.

Q Is it your desire to avoid controversial matters going on in the malls?

A Oh, yes, sir. Like any business, I want to do business with everyone. We don't want any controversy. Everyone is entitled to his own belief. We don't want any controversy that other people could feel uncomfortable or unhappy about.

Q If you permit one group to handbill, are you afraid that would invite controversy if you turned others down?

A Well, the other people would be extremely unhappy if we didn't let them do it. I think it is either to let everyone do it or no one do it.

THE COURT: There might be a waiver. If you let the Veterans of Foreign Wars use it and don't let the American Legion [50] use it, that is the very point I am trying to bring out, have you already waived.

THE WITNESS: I can say this: I didn't think I could—I didn't think they could go back there again if we didn't want them or if they did something we didn't approve of.

MR. MILLER: I have no further questions.

MR. NEIL: I have nothing further.

THE COURT: That's all.

Call your next witness.

MR. NEIL: Call Mr. Tanner.

[51] DONALD McLERAN TANNER was thereupon produced as a witness in behalf of the plaintiffs, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Will you state your full name and your address, please.

THE WITNESS: Donald McLeran Tanner.

THE CLERK: Your address.

THE WITNESS: 906 S.E. Ankeny, Portland, Oregon.

THE CLERK: Be seated, sir.

DIRECT EXAMINATION

BY MR. NEIL:

Q Mr. Tanner, you are one of the plaintiffs in this case?

A Yes.

Q Were you handing out leaflets, Plaintiffs' Exhibit 1; at the Lloyd Center on November 14, 1968?

A Yes.

Q Doing so in the area right outside the Lloyd Center —the Meier and Frank entrance at the central mall?

A Yes, sir.

Q And, did any security guard come up to you that day?

A Yes.

Q What did he say to you?

A He said they had a policy at Lloyd Center not to permit people to hand out handbills and that if I wanted to pass out [52] handbills in the area, I would have to go out to the public sidewalk.

Q Did he say anything to you with respect to arrest?

A No.

Q Did any other person attached to the Lloyd Center say something to you with respect to arrest?

A Yes, the chief of the security force.

Q That is Captain Boss?

A Yes.

Q How did you get to Captain Boss presence?

A I told the security officer that I wanted to talk to the people who were in charge of the policy at Lloyd Center.

Q Then you were taken to Captain Boss?

A Yes.

Q What did Captain Boss say to you with respect to arrest?

A He said that if I refused to leave Lloyd Center I would be arrested for trespassing.

Q Did you have any further questions with any officials at Lloyd Center?

A Yes. I talked to Mr. Horn.

Q And, did Mr. Horn say anything with respect to arrest?

A He said essentially the same thing that Captain Boss said, if I did not leave, I would be arrested for trespassing.

Q Were you leafleting alone that day?

THE COURT: I didn't hear you.

[53] Q (By Mr. Neil) Were you handing out leaflets by yourself that day?

A Yes.

Q But, to your knowledge, were there others also handing out the same leaflets?

A Yes.

Q About how many in the Lloyd Center that you knew of?

A I knew of about five.

THE COURT: How many?

THE WITNESS: Five.

Q But, they weren't with you; is that right?

A No.

THE COURT: Do you know where they were?

THE WITNESS: Yes.

THE COURT: Where?

THE WITNESS: Some of them were out on the—all of them were out on the public sidewalk that I saw.

THE COURT: Some of them were in the malls near where you were handing out leaflets?

THE WITNESS: When I arrived, some of them were in the malls. But, they were told to move to the sidewalks also; and, they had done so.

Q (By Mr. Neil) You saw these other people when you left to go out to the sidewalk; is that right?

A When I was arriving, I saw one other person in the mall. [54] When I went out to the sidewalk there were three other people already there.

Q What did you do when told to cease distributing or you might be arrested? Did you continue to leaflet in Lloyd Center?

A No, I left.

Q Why?

A Because I didn't want to be arrested.

Q Now, did you block any traffic, pedestrian traffic in handing out leaflets?

A I don't think so.

Q Did you see anybody else do so?

A No.

Q Was that true in the public sidewalks as well as in the Lloyd Center?

A Yes.

Q Was there any hostile public reaction from any passerby when you passed this out?

A Just one comment.

Q What did—Was she a lady?

A She said something like, "Drop dead" or something like that.

THE COURT: I didn't hear what you said.

THE WITNESS: She said, "Drop dead" or something like that.

Q (By Mr. Neil) Is that the only incident?

[55] A Yes. Well, one lady was arguing with the policeman to leave me alone.

Q Was that when you were in Lloyd Center?

A Yes.

MR. NEIL: Nothing further.

CROSS-EXAMINATION

BY MR. MILLER:

Q Mr. Tanner, the Lloyd Center people were courteous to you when they discussed this matter with you?

A Yes.

Q The one man was somewhat apologetic to you?

A Yes.

Q You engaged Mr. Horn in a conversation about the private and public character of Lloyd Center, did you not?

A Yes, I did.

Q You told him it was private—you told him it was public?

A I though it was a public place, yes.

MR. MILLER: If your Honor please, we will offer Exhibit No. 54.

MR. NEIL: No objection.

THE COURT: What is it?

MR. MILLER: It is a written report by Mr. Tanner of the events that occurred.

THE COURT: Any objection?

MR. NEIL: None.

[56] THE COURT: What other exhibits do you want to offer?

MR. MILLER: I would like to offer Exhibit No. 56.

MR. NEIL: I don't have any objection to that.

THE COURT: How about 54 to 59 inclusive?

MR. NEIL: Yes, I object to 57; I object to 58; I object to 59.

THE COURT: "The resistance notes" what is that?

MR. NEIL: These are publications mailed to Mr. Miller by the Resistance in April of 1969, long after the events in question here. I contend they are irrelevant.

THE COURT: When did the events take place here?

MR. NEIL: November 14, 1968.

THE COURT: Are you a member of the Resistance movement? What do they call the organization?

MR. NEIL: Your Honor, the testimony is in the deposition that The Resistance is not a formal organization. It is an informal organization called The Resistance.

THE COURT: Is this the one at Centenary Wilbur Church?

MR. NEIL: Yes, it is.

THE COURT: What is the undated letter to Robert from Betsy? Who is Robert and who is Betsy?

MR. MILLER: I am Robert, your Honor, and Betsy is the plaintiff, M. s. Wheeler.

MR. NEIL: I object also to that, not on the authenticity, but on the relevancy on the ground that counsel is offering these [57] exhibits, your Honor, to establish the Plaintiffs' belief that they advocate certain viewpoints and certain beliefs. I contend that is irrelevant. We have to judge by the contents of the leaflets here.

THE COURT: I think that is right. But, what about the resolution adopted by Lloyd Center?

MR. NEIL: That resolution was dated February 11, 1969 to the effect that the Lloyd Center merchants don't want people like our clients to use the malls. I think that is irrelevant too.

THE COURT: I will take them under advisement.

(Whereupon Defendant's Exhibits Numbers 51, Deposition of Donald M. Tanner; 52 Deposition of Betsy Wheeler; 53, Deposition of Susan Roberts; 54, Written statement of Donald M. Tanner dated November 26, 1968; 55, 24 photographs of Lloyd Center; and

56, Lloyd Center lease form provision applicable to common areas, operation and right-of-way were received in evidence. 57, Resistance notes dated April 15, 1969; 58, Undated letter to Robert from Betsy; 59, Resolution adopted by Lloyd Center Merchants
[58] Association dated February 11, 1969, were objected to and taken under advisement.).

THE COURT: Go ahead, Mr. Miller.

CROSS-EXAMINATION (CONTINUING)

BY MR. MILLER:

Q Mr. Tanner, when Captain Boss talked to you, what he said about arrest was that he could obtain a John Doe warrant for your arrest; isn't that what he said, Mr. Tanner?

A He said he could do that if I refused to give him my name.

Q But, he didn't say that he would arrest you, did he?

A He said he would have the Portland Police to arrest me if I did not leave.

Q He also mentioned John Doe warrant if you didn't give him your name?

A He asked me my name. I refused to give him my name.

Q When you left the Lloyd Center, you didn't distribute any more leaflets that day, did you?

A No.

Q Did you go to the meeting that night at the Centenary Wilbur Church that was advertised by the leaflets?

A Yes, I did.

Q Were draft cards turned in at that meeting?

MR. NEIL: I object to anything that happened at that
[59] meeting. It has to be judged by the contents of the leaflets.

THE COURT: I think that is right. What difference would that make?

MR. MILLER: The leaflets, if your Honor please, does state on its face that it is inviting the public to a meeting where the community will sever its resistance with the Selective Service. And, it states that the people—

THE COURT: Doesn't the leaflet speak for itself?

MR. MILLER: I think it is subject to some interpretation. I think the aim of the plaintiff in passing out the leaflet—

THE COURT: How does that determine whether Captain Boss was correct in stopping him or not stopping him; isn't that the issue?

MR. MILLER: The property involved here, your Honor, is private property.

THE COURT: I am admitting that. Let's assume that to be true. How would your right be enlarged any by what was said that evening or six months later? How are you going to get any comfort from that?

MR. MILLER: It may be that a private property owner in some circumstances is required to permit people to come on and exercise First Amendment rights. But, it is our position that if the person distributing the literature is advocating the violation of the Selective Service laws—

[60] THE COURT: I would like to know the case upon which you rely.

MR. MILLER: We rely on the *Gara* case.

THE COURT: Tell me what the facts are in the *Gara* case.

MR. MILLER: The facts in that case are: A college professor had told a young man not to permit the Selective Service people to coerce him into registering for the draft. And, he was convicted.

THE COURT: How is that important here?

MR. MILLER: We think the leaflet involved does advocate the violation of Selective Service laws.

THE COURT: Then you have the leaflet. If you think so, why do you have to find out what happened that evening or some other time? How could the head of security make a determination on the basis of a meeting that was not yet held?

MR. MILLER: The intention and the purpose of the people in passing out the leaflet goes, I think, to the determination of whether what they were doing was lawful or unlawful. And, they invited people to the meeting—

THE COURT: What case do you have in point?

MR. MILLER: I think the *Gara* case says that violation—advocating violation of Selective Service law is unlawful. And, we can, in any event—

THE COURT: Before you were born, the Supreme Court of [61] the United States took up that issue and said, "No." That was the case that came from Oregon. That is the DeJonge case. That case says that a man is to be held for what is done at that particular time and not who calls the meeting. That is part of the First Amendment right.

MR. MILLER: In the *Gara* case, your Honor, there was a great deal of discussion about what the defendant had said on various occasions with respect to the matter, a letter he had written to the Selective Service describing—

THE COURT: The objection is sustained.

MR. MILLER: We would like to ask the question in an offer of proof.

THE COURT: You can do it at a later time or tomorrow morning early.

Q (By Mr. Miller) Mr. Tanner, no one representing the Lloyd Center told you that they personally would arrest you on that day, did they?

A Yes, that's correct.
MR. MILLER: I have no further questions.
MR. NEIL: Nothing further.
THE COURT: Call your next witness.

(Witness excused.)

MR. NEIL: Call Miss Roberts.

[62] SUSAN ROBERTS was thereupon produced as a witness in behalf of the plaintiffs, and having been first duly affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Will you state your full name and your address, please.
THE WITNESS: Susan Roberts.
THE CLERK: Your house address, please.
THE WITNESS: 2626 S.W. Water, Apartment No. 4.
THE CLERK: Thank you. Be seated.

DIRECT EXAMINATION

BY MR. NEIL:

Q Miss Roberts, you are one of the plaintiffs in this case?
A Yes, I am.
Q And, were you handing out the leaflets which is Plaintiff's Exhibit 1 at Lloyd Center on November 14, 1968?
A Yes, I was.
Q Where within Lloyd Center were you handing them out?
A Along the east mall down almost to the ice skating rink.
Q There is a reference in one of the security officer's deposition to a girl with a dog.

A I have a dog.

Q Was that you?

[63] A Yes.

Q Were you contacted by a Lloyd Center security guard on that day?

A Yes, I was.

Q And, what did he tell you?

A He came up to me and said I had to stop leafleting at Lloyd Center or I would be arrested?

THE COURT: Or you would be arrested?

THE WITNESS: Yes.

THE COURT: Who was that man?

THE WITNESS: I found out later he was a security guard. I thought he was a policeman.

MR. NEIL: I don't think she knows the name.

THE WITNESS: No, I am sorry, sir, I don't.

Q Now when told to do that, what did you do?

A Well, I left Lloyd Center. I didn't want to be arrested.

Q Before you left, did you have a conversation with any other official of Lloyd Center?

A Yes. I discussed the issue with Mr. Horn. He had come down. I don't know if the security guard called him. He came down and explained to me why I should be leaving Lloyd Center instead of leafleting.

Q Did he back up the security officer?

A Yes.

THE COURT: I don't know what "back up the security [64] officer" means.

Q Did Mr. Horn tell you also to cease distribution within Lloyd Center?

A Yes, he did.

Q To your recollection, did he say anything himself about arrest?

A No, I don't believe he did. He was explaining the reasons.

Q Did you see others distributing this leaflet at Lloyd Center on the day?

A Not in the mall; in the central area. When I left the center, I went out to the street and saw people there.

Q Was there any disturbance, blocking of traffic, disorder or anything of that sort?

THE COURT: I think it has been stipulated that there wasn't.

MR. NEIL: Nothing further.

CROSS-EXAMINATION

BY MR. MILLER:

Q Miss Roberts, after talking to Mr. Horn, you went out into the street and distributed your literature?

A Yes, I did.

Q How long did you stay there?

A Perhaps an hour.

Q People were passing by whom you could give the literature [65] to?

A A few.

Q Did you get rid of your handbills?

A I don't believe I did.

Q You testified in your deposition that you didn't know; is that right?

A I think that's what I said, yes.

THE COURT: She likes to distribute handbills when she is covered. It is nicer inside.

Q (By Mr. Miller) The place you were distributing them was covered, was it not, Miss Roberts?

THE COURT: I don't know whether that makes any difference really, whether she got rid of her handbills or not. How is that going to prove anything in this case?

Q (By Mr. Miller) What the police said to you with respect to arrest, Miss Roberts, was: If you did not

stop distributing literature at that location, he would call the police; is that correct?

A Well, no. He said he would arrest me—I would be arrested. He didn't say whom. According to my recollection, I would be arrested.

Q Page 27 of your deposition, were you asked this:

"Was there anything said about calling the police if you did not . . ." Starting on page 26:

"Q Miss Roberts, in your first conversation at the [66] Lloyd Center with the uniformed guard, as I understood your testimony, he ultimately said —asked you to leave the premises; is that correct?

A Yes.

Q Was there anything said about calling the police if you did not do so?

A Yes.

Q What did he say?

A We first discussed whether I would—would or would not stop—have to stop leafleting, and then he said that I would, in fact, have to leave or he would have to call the police."

Did you give that testimony when your deposition was taken on May 29, 1969?

A Yes.

Q Was it true?

A Yes, it was true.

THE COURT: She gave the testimony. There is no jury here. You don't have to ask those questions.

MR. MILLER: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. NEIL:

Q Did you believe, Miss Roberts, you would be arrested if you continued distributing literature within Lloyd Center?

A Yes, I did.

[67] THE COURT: What did you say?

MR. NEIL: I said did you believe, if you continued to distribute literature within Lloyd Center, you would be arrested?

A Yes, I believed that.

MR. NEIL: All right. Thank you.

Your Honor, my only other witness is the third plaintiff.

THE COURT: Is it stipulated that if the third plaintiff would testify, she would testify substantially in accordance with what the other two plaintiffs have said?

MR. BLACK: Is that all right?

MR. MILLER: The third witness didn't talk to Mr. Horn.

MR. NEIL: That is true. But the security guard said the same thing.

MR. MILLER: The third witness said in her testimony in deposition that she couldn't recall exactly what was said about arrest.

THE COURT: Is that right?

MR. NEIL: She said—Yes, I will have to admit that.

THE COURT: We will just not consider her testimony for anything other than the fact that the security guard asked her to stop leafleting; is that all right?

MR. MILLER: Yes we would stipulate to that.

MR. NEIL: We rest, your Honor.

[68] THE COURT: Call your first witness.

MR. MILLER: May I ask how long we will be in session? I have a first witness. I would like to make arrangements to get the others here.

THE COURT: We will go to 5:00 at least.

MR. HORN: Your Honor, may I say, I have to admit something here. I said a little while ago I never practiced law. I didn't consider I did, because I had to make a living, I did draw a few deeds.

THE COURT: That is all right. Weren't you in the insurance business for awhile also?

THE WITNESS: Real estate, your Honor.

THE COURT: Call your first witness.

MR. MILLER: Call Mr. VonHagen.

[69] RICHARD VonHAGEN was thereupon produced as a witness in behalf of the defendant, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: State your full name and your address.

THE WITNESS: Richard R. VonHagen, Beverly Hills, California. Do you want my street?

THE COURT: We don't need it.

THE CLERK: Spell your last name.

THE WITNESS: V-o-n-H-A-G-E-N.

THE CLERK: Be seated, please.

THE COURT: You are a lawyer and what else?

THE WITNESS: I have been as one who is primarily responsible for our development in the City of Portland. I would like to make a brief statement, I think it is very pertinent. And, I am vitally concerned about the problem and I would like you to hear it. I will assure you I will be quite brief.

THE COURT: Go ahead.

THE WITNESS: We started planning for the Center approximately 1953. At the outset, it became very obvi-

ous that we could not build what was typically known as a shopping center. The reason for this was we were dealing with property that is not in an undeveloped suburbian area. Instead, we dealt with centrally located property that was already developed into 200 foot blocks —200 feet square with 50 foot streets.

[70] This fact dominated our thinking and resulted in the construction of an area that is quite different in two basic respects from what we commonly refer to as a normal shopping center.

The first one is that we could not hope to have one large area undivided by any public street because of these small blocks.

In fact, we had to plan a center which had within it a network of public streets and public sidewalks.

In fact, the City requested that we widen these streets so that we could have better vehicular traffic through the area and so we could build proper sidewalks around our improvement.

The second basic difference was that we could not rely on surface parking. The amount of parking we needed for this type of development was such that we felt that it was absolutely necessary to build structural parking. This was to bring the customers closer to the store and also to protect them from the weather and to protect them from the necessity of crossing streets going to and from the stores.

Now, let us analyze exactly what we did in view of these conditions.

First, we built two markets with parking. These two market buildings, both with parking, these markets were surrounded on three sides by public streets and public sidewalks.

[71] We built another building which was occupied by a bank, a drug store, and several shops. This building also is surrounded or adjacent to public streets.

We built a third building which is occupied by the Newberry Department Store with parking for it. This is adjacent to public streets and private sidewalks.

We built the large area and in order to facilitate and take care of the number of stores we had to have there, we did in fact vacate several streets in that area. We acquired those streets by purchasing them by an exchange and vacated them and built what essentially is one building.

MR. NEIL: I object, your Honor. I have heard the contention made before that they paid money for this vacated street.

There is in evidence here a series of ordinances where the streets were vacated for some 8.3 acres; there is an ordinance also that they granted some areas to the city, 74,000 square feet, one fifth of what they have got, to widen the street. I see nothing in it about them paying for the area vacated. And, I object to the testimony.

THE WITNESS: Your Honor, if he will read the exhibits, he will find we agreed in that exhibit to dedicate an equal amount of square footage for the streets that were vacated; that we did.

MR. NEIL: May I point out to the Court the ordinance which is part of the exhibits?

[72] THE COURT: I am going to let him testify without interruption. You may make your objection later. So far, I have not found anything relevant in this testimony.

Mr. VonHagen, you are a lawyer. Wasn't your father a lawyer? Is Ralph VonHagen your father?

THE WITNESS: Yes.

THE COURT: I know you are intimately acquainted with this particular property. I know that Lloyd Center has become a model for other places. I think Century City development was modeled after yours. If it wasn't, it looks very similar to it. But from the very start I

came in here and I looked at this problem, it seemed to me that there were certain issues that I must determine. It is not whether I like these boys that hand out this literature. Many of them don't like me. I know that. I am looking at them. I send them to jail. But that is not the proposition. The issue is: Whether a shopping center of the size and magnitude of yours can separate and distinguish between people who want to use those facilities, not for the purpose of the shopping center but for their own purpose, for instance, the Salvation Army—

THE WITNESS: Your Honor, I would hate to think by permitting the poppies to be sold at Christmastime, I would be committing my stockholders to a dedication of $34,000,000 worth of property to the public by doing that generous act.

THE COURT: You may hate to think so, but that is not [73] the proposition I have to determine. I have to decide as a matter of law. Maybe you should not have done it. But, the thing I have got to determine is, having taken certain steps, are you committed to permitting certain other things to be done.

THE WITNESS: Would you indulge me just three or four minutes?

THE COURT: Sure. As a lawyer, I thought we ought to talk about what I believe to be the issue in this case.

THE WITNESS: As a lawyer, I will make my say briefly and then finish.

THE COURT: Go ahead.

THE WITNESS: As I said, I felt this large block of property was again one building in which we put the parking underneath the stores and facilities on the roof for the delivery of the merchandise. This was done for the convenience of our prospective customers. And, we built the Sheraton Hotel and surrounding areas. It is surrounded by public streets. Today, we are finishing an

office building with parking structures. It has public streets, your Honor. We hope to continue to improve the City of Portland in a similar manner.

Now, it is my thought, and it is our corporation's thought, this is our private property. And, we are perfectly—we will agree that we have devoted it to retail purposes. But, we think we have the perfect right to say what activities that are connected with the business of that center and can or cannot [74] come upon our private property. That would apply to the Sheraton Hotel; that would apply to our office buildings; that would apply to the markets or anywhere else.

We have leased to each tenant, not only the interior of the building, we have leased the sidewalks, the escalators, the stairways, the parking lots. And, we maintain them. We are obligated to. We have to keep them clean. We also have to protect them. It is our duty to see that the environment there is such that the customers will come to trade with our tenants. We think we have a duty to protect that environment. That is what we have been trying to do for nine years.

THE COURT: I have no quarrel with your position in the sense that that is what you hope to do and propose to do. But the only issue before me is whether you have the right or privilege of stopping someone from passing out literature either on the central mall or in front of the interior buildings or in front of the Selective Service building, 811 N.E. Oregon. Those are the questions that bother me. I think there might be a distinction between the sidewalks in front of the interior buildings and the malls. But, I don't see how what you had in mind at the time you purchased this property is going to assist me in making the legal determination that I have to make. That is the point.

THE WITNESS: If I may beg to say, if you will read the *Logan Valley* case as I am sure you are going to, you

will see the point I have been trying to make. I think the case is ve y good [75] authority for my point—

THE COURT: It may very well be.

THE WITNESS: —unless these activities are directly connected with activities that are going on in the center, we, as private property owners, have the right to say who can come upon our property. If we can't, there is something wrong in this country. You can apply that to any store in the City of Portland. You can apply it to any se vice station, any parking lot. Those property owners have to protect their property. If it is an activity that is directly involved with what they are carrying on in their property, that is another matter. If it is something entirely foreign, I, as a property owner and developer, would certainly be surprised if I couldn't treat it as private property.

THE COURT: Well—

THE WITNESS: That is my point.

THE COURT: I don't know whether you are going to be surprised or not, Mr. VonHagen. In making this dete mination, I cannot take into consideration whether you are going to be surprised or not. I have got to follow those decisions which I regard—

THE WITNESS: Believe me, I didn't get up here to discuss the law. Our lawyers will do that adequately.

THE COURT: It may be that a business has a certain obligation to its tenant. It may be that more people would be [76] attracted if no controversial activity took place at Lloyd Center and if only Bobby Kennedy would come out there and make speeches you would get a lot more business or maybe Ronald Reagan, whom you like bette ; but, the thing is, that may not be the law. The law may be that anyone has a right to come there, I don't know if that is the case or not. I haven't looked at it. Yesterday was the first time I ever saw this case, and that was when I talked to Mr. Miller and Mr. Neil

and told them to decide on all the facts and they told me briefly what it was about. I thought then and I still think that this case involves primarily an issue of law and not of facts.

THE WITNESS: Mind you, we are not opposed to handbilling in the public areas of Lloyd Center. There are plenty of streets and sidewalks in Lloyd Center for them to do that. We have no objection whatsoever. And, I think it can be well done. As I say, I commend the *Logan Valley* case to you. I believe it supports our position very strongly.

THE COURT: I didn't want to cut you off. Is there anything else you wanted to say?

THE WITNESS: May I ask our lawyers?

THE COURT: Who is asking the questions, you, Mr. Black? Go ahead.

DIRECT EXAMINATION

BY MR. BLACK:

Q Do you know what I mean when I refer to customer [77] motivation?

A Yes, sir.

Q Would you tell the Court something about customer motivation and its relation to the manner in which the Lloyd Center is arranged and operated with particular reference to the malls in which the plaintiffs here were seeking to distribute literature.

A Well, it was our desire to create an atmosphere which would attract shoppers, which would please them and which would not disappoint them when they came there to do their shopping. If you can accomplish those things, you have achieved what you call customer motivation. We get them there and they are happy there and enjoy it. We keep them out of the rain. As we say,

it never rains in Lloyd Center. If it does rain, we keep them dry. We give them pretty flowers; we give them structures, fountains; we give them skating rink which they enjoy watching, we have done a lot to develop this custome motivation, to attract them.

Q Mr. VonHagen, could you tell the Court of anything which is there in connection with the malls that we are talking about at Lloyd Center which bears a similarity at all to a public street?

MR. NEIL: I am going to object to that as calling for a conclusion.

THE COURT: That is not for him to determine. That is [78] for me to determine, isn't it?

Q (By Mr. Black) The escalators that are in there, are they in the malls?

A Well, they lead from one level to the other. This center is multi level. In order to get from one place to another, you don't have a street to walk down. You have to go up the escalator or down it or the stairways. Actually, we have no public streets in front of the stores. It's a sidewalk with landscaping, with benches—

Q Take for instance, the eastern boundary of the center which is about 16th Street, I think, and the western boundary which is 9th Street, can you go through what's been referred to as the main building from 9th Street and get to 16th Street without changing levels?

A No, sir.

Q And, that is true vice versa; isn't it?

A Yes, sir.

Q The opposite direction?

A Yes.

Q If you want to go from the northern part of the center down towards the Sheraton Hotel, the southern part of the center, can you go through that way without changing levels?

A No, sir.

MR. NEIL: Well, your Honor, I am going to object to further testimony. Nobody is leafleting around the escalators. [79] We could concede their right to prohibit us from doing that. We don't deny they have a right to regulate it so we wouldn't obstruct traffic.

MR. BLACK: I would just want to say that I am not offering it for that point. I have already agreed with you that you weren't doing any obstructing. What I am seeking to show here, and, of course, the time can be shortened very greatly if Mr. Neil will simply admit this: And, that is, there is no similarity between this mall and a public street. That is what I want to show. If he will admit it, we will go home.

MR. NEIL: I will not admit that at all, your Honor.

MR. BLACK: That is what I am seeking to prove. If you won't admit it, then I will have to prove it.

THE COURT: I will tell you the same thing, there is no jury here. There is no use making that kind of argument. It leaves me cold. Go to something else. I don't go for that kind of foolishness. Ask your questions. There is no use of getting histrionic about a thing like that.

MR. BLACK: I wasn't trying to.

THE COURT: Go ahead.

Q (By Mr. Black) I think you probably left all, as far as the direct operation of the center to the manager, Mr. Horn, did you not, as far as the day-to-day operation?

A Yes, sir.

Q Yours has been more of a supervisory executive capacity; [80] is that correct?

A That is correct.

Q Insofar as you can recall, as the principal executive of that corporation, with regard to its operation there at the center, has the corporation ever taken any position pro or con with regard to these various causes that are the subject of handbilling in the country?

A No, sir, we have not.

Q It's handbilling generally that you are talking about; is that it?

A That is correct.

THE COURT: Mr. VonHagen, how do you say that in light of the questions I propounded before; if you say that the Townsmen's Club cannot meet at your place, but that the Young Republicans can, aren't you putting your seal of approval on some and and denying that seal to others? Aren't you actually saying to some people, "We will let you come there because we like the things that you do," like Mr. Horn has said. He likes the things that the Salvation Army has done because they are poor people and they do good work. Isn't the point that if you don't want to take a stand on the merits or demerits of an organization or a pamphleteer, you have to permit all pamphleteers unless they are immoral or illegal, to do the same thing.

THE WITNESS: What I meant to say, I am not opposed to handbilling if they do it in the proper place. As I say, there are [81] plenty of areas within our development for them to do their handbilling. We have objected to it on what we considered our private property.

THE COURT: Did you set aside certain places for them to do it?

THE WITNESS: No. But, there are—I would guess there are 30 or 40 blocks of public streets within Lloyd Center that they can do it on.

THE COURT: I thought you had set aside a certain place.

THE WITNESS: No, sir, they can contact the public very well from the public sidewalks within our development.

THE COURT: In other words, I own some property very close to you, you don't care if they do their pam-

pleteering on my property then, do you? That is what you are saying.

THE WITNESS: No, I don't care if they do it on public property. I would be opposed to them doing it on anybody's private property. I don't know what it leads to if they can distribute it anywhere. They can come there and make a speech. They could have an assembly. It would be chaos, frankly.

THE COURT: All right. It is your position that since this is private property and your corporation owns it, you can determine which organization may use it and which organization may not use it; is that correct?

THE WITNESS: Well, actually I haven't issued any such order from Los Angeles.

[82] THE COURT: I thought that was your position. Do you disagree with Mr. Horn's appraisal and the views that he expressed?

THE WITNESS: No, I don't disagree with Mr. Horn.

THE COURT: I am not trying to trap you or anything; I just want to know what your position is.

THE WITNESS: I think our position has been to exclude them. There have been a few exceptions made because we felt they were good for the center; they would bring people there and it was customer motivation.

In the case of the poppies and the Salvation Army, we were just being charitable. As I say, I would hate to think that would result in the conversion of private property into public property by doing such a favor as that to those organizations. That would not be my conception of what the law is. If it were, we would have excluded all such activity.

THE COURT: Any cross-examination?

MR. NEIL: None, your Honor.

THE COURT: That's all.

(Witness excused.)

Call your next witness.

MR. MILLER: I would like to call as part of the defendant's case, Mr. Tanner. I have one question I would like to ask him.

THE COURT: You can ask it from there if you have only one question.

[83]

DIRECT EXAMINATION OF MR. TANNER

BY MR. MILLER:

Q Mr. Tanner, in your deposition—

THE COURT: Ask him the questions you want to ask him. Then if he gives you the wrong answer, you can impeach him by the deposition.

Q (By Mr. Miller) Is it your belief, Mr. Tanner, that the passing out of the handbills that you were passing out on November 14th could properly be interpreted as advocating the violation of the draft law?

MR. NEIL: I object. The leaflet speaks for itself.

THE COURT: The objection is sustained.

MR. MILLER: I would like to have the question answered under an offer of proof.

THE COURT: You can do it a little later.

MR. MILLER: Thank you, your Honor.

THE COURT: Call your next witness.

MR. BLACK: Mr. Nudelman. If your Honor please, I have several witnesses that I have asked to come over. I would be glad to suggest what they would testify to, and maybe we could move the matter along.

THE COURT: I think that is a good idea.

MR. BLACK: This is one of them. I have also asked Mr. Leigh to come over. This is Mr. Nudelman who is here now.

THE COURT: Who?

[84] MR. BLACK: Mr. Nudelman.

THE COURT: I thought I knew all the Nudelmans. He is one I don't know. Go ahead. What is your first name?

MR. NUDELMAN: Burton.

THE COURT: All right.

MR. BLACK: These witnesses, I believe, would testify that the distribution of literature, that is handbilling, is detrimental to customer motivation at the Lloyd Center. In other words, it is detrimental to the business conducted at the center.

THE COURT: Any kind of handbills?

MR. BLACK: Yes; that it is detrimental. It is a question of degree with reference to the handbills and how much of it and things of that kind. This is detrimental.

MR. NEIL: If that is a statement of their opinion, I have no objection. I would stipulate they would so testify.

MR. BLACK: All right. That's all they would say.

THE COURT: Mr. Nudelman, what business are you in out there?

MR. NUDELMAN: Zukors.

THE COURT: All right.

MR. BLACK: It will be stipulated that that was the situation on November 14, 1968 as well.

THE COURT: That is his opinion.

MR. BLACK: They would give the opinion anyway.

MR. NEIL: Yes.

[85] THE COURT: Who is your next witness? You said you had two witnesses who would say that.

MR. BLACK: Yes, Mr. Leigh. He hasn't arrived yet.

THE COURT: Do you know what he is going to testify to?

MR. BLACK: The same thing as Mr. Nudelman.

THE COURT: What does Mr. Leigh do?

MR. BLACK: Mr. Leigh is the President of the Merchant Association of Lloyd Center. And, his occupation particularly over there is Manager of Nordstrom-Best.

THE COURT: All right. Is that stipulated to?

MR. NEIL: The same stipulation, your Honor.

MR. BLACK: Mr. Leigh, if your Honor please, will identify his signature at the bottom of the resolution of the Merchant's Association that I understand has been offered here as one of the exhibits, 59. It has been taken under consideration by your Honor.

MR. NEIL: I have no objection to the authenticity. I object to the relevancy of the document. That came after the events in question.

THE COURT: Mr. Nudelman, you are excused.

Call your next witness.

MR. MILLER: May I have just a moment, your Honor?

MR. BLACK: We have just two other witnesses.

THE COURT: Tell me what they are going to say. Maybe Mr. Neil will agree to what they would say.

[86] MR. BLACK: One is an employee, I take it, of the Graham Architectural firm in Seattle. He has, as I understand it, participated in the designing of a large number of shopping centers of this general type throughout this country and the world. We thought we would bring him for the purpose of showing the construction of the Lloyd Center and its application toward customer motivation. That is what we thought we would bring him for.

MR. NEIL: I will stipulate he would testify that the Lloyd Center was designed to stimulate customer motivation.

THE COURT: And it was designed for the purpose of getting as many people over to buy the commodities of

the people who have stores or service establishments at Lloyd Center.

MR. NEIL: I will be willing to so stipulate.

MR. MILLER: If your Honor please, the architect's name is Mr. Alvin Harrison. He planned to be here at 9:00 tomorrow morning. It was our intention that we would write out statements of his qualifications and his direct testimony and offer it in evidence. We have a preliminary statement from him as to the general nature of his testimony. But, it doesn't include—it doesn't include specific statements about Lloyd Center. And, it doesn't include his qualifications. And, we would be willing to offer that written statement and offer Mr. Harrison, the architect for cross-examination—.

MR. NEIL: I don't want to cross-examine him.

[87] MR. MILLER: —at 9:00 in the morning.

THE COURT: The case is going to be over this afternoon. So, you don't have to do that.

Mr. Miller, you seem to have a lapse of memory. Don't you know when you run out of witnesses you close your case in this court?

MR. MILLER: There had been a day and a half set for this case.

THE COURT: I wasn't bound by that.

MR. MILLER: I know that.

THE COURT: I told you yesterday again the cases have a tendency of moving faster in my court than most other places.

MR. BLACK: We have written statements from both the two witnesses who haven't arrived yet.

THE COURT: What are their names?

MR. MILLER: If your Honor please, there is one additional witness we had planned to call. His name is H. J. Sundt. He is an Assistant Manager of the Lloyd Center.

The purpose of calling him—

THE COURT: Is he here now? Is that your man that is coming in now?

MR. MILLER: No. He is not here right now. The purpose of calling Mr. Sundt was to have him testify to an incident that occurred at the time the complaint in this case was filed with regard—it was filed, I think, around the 13th of March and the [88] calls that he received from certain people about the incident.

I have Mr. Sundt's statement made to the officer of the Lloyd Center there dated the 14th of March, 1969. It was from various people who were threatening to beat up on various other people like these plaintiffs and things of that character.

The purpose of the offer was solely for the purpose of showing—to support our position that handbilling is controversial; that this particular handbilling did give rise to some matter of controversy.

THE COURT: You mean some people didn't like these plaintiffs and wanted to beat them up?

MR. BLACK: Yes, that's it.

MR. NEIL: Your Honor, he says this event occurred about the time the complaint was filed which was in March of 1969. I know of no such incident as that. I really can't understand that.

MR. BLACK: It goes back to this particular incident.

THE COURT: I will assume that if the witness was called he would testify as to those conversations he had with unknown people. But, I will take the matter of its admissibility under advisement.

MR. BLACK: May I submit the statement to Mr. Neil?

THE COURT: Yes. What is your next witness?

MR. BLACK: I think that's our case, your Honor.

MR. MILLER: If your Honor please, before we rest, we [89] have—I handed Mr. Neil a written statement that was prepared by Mr. Alvin Harrison, the architect. Mr. Neil has stated that we may put in into evidence.

THE COURT: I thought he was going to do that. It is stipulated that if Mr. Harrison were here he would testify in accordance with his statement that he presented.

MR. NEIL: So stipulated. I haven't yet read the other one yet.

THE COURT: Which one?

MR. NEIL: The one Mr. Black just mentioned.

THE COURT: This statement of what people told the Assistant Manager of Lloyd Center when the complaint was filed is a very dubious one as to its admissibility. I don't think, however, you have to put any testimony on to show that the passing out of literature or handbills opposing the American participation in the Vietnam war or the draft is a controversial matter. I know it to be controversial. So, if that is the purpose of your offering that piece of evidence, I think you are just wasting your time because I know that.

MR. BLACK: That is the purpose, if I could have the record show it.

MR. NEIL: This memorandum, your Honor, as I thought Mr. Black stated, deals with a telephone call to Mr. Sundt on March 13, 1969.

THE COURT: I know that. Do you have any objection to [90] my taking judicial knowledge of the fact that pamphlets on behalf of the Resistance movement or urging people not to participate in the draft or support the Vietnam war is a controversial matter?

MR. NEIL: No. You may take judicial notice of that.

THE COURT: All right.

MR. NEIL: I do object to the document going in.

THE COURT: He doesn't want it now.

MR. MILLER: Could we have one other little matter, your Honor?

THE COURT: Yes, go ahead.

MR. MILLER: Mr. Harrison, whose written statement has been received in evidence, has advised me that

the design principles that he describes there for shopping centers were applied in the design of Lloyd Center. I would ask counsel to so stipulate.

MR. NEIL: So stipulated.

THE COURT: I will take judicial notice that shopping centers are designed in general and the one in Lloyd's addition in particular to attract as many people as possible and make it most pleasant for them to shop and spend money.

MR. MILLER: I would like to call again Mr. Horn as part of our case and ask him some questions.

THE COURT: All right, Mr. Horn.

[91] RICHARD C. HORN was thereupon produced as a witness in behalf of the defendant, and having been previously sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q Mr. Horn, has handbilling of any kind ever been —excuse me—I will rephrase the question.

Has Lloyd Corporation ever given permission to anyone to handbill in Lloyd Center?

A No, sir.

Q Does Lloyd Corporation discriminate in the rental of its auditorium to any group or persons?

A No, sir.

Q It does not discriminate?

A No, sir.

Q If the plaintiffs' group was going to carry on lawful activity in your auditorium, would you rent it to them?

A Yes, sir.

THE COURT: Would you have rented it to them to carry on a Resistance program?

THE WITNESS: I want to think about that, your Honor, because our rule on the auditorium is that we would not rent it to anyone advocating the overthrow of the United States Government. And, I never have gone into that point whether it also [92] advocated the breaking of the laws of the United States. I would be inclined to say we would not want to rent it for that purpose whether it said any other law of the United States.

Q If their resistance and opposition to the war in Vietnam and to the draft laws of this country was to be carried on in a lawful manner, you would have no objection?

A No.

Q You would have no objection to renting the place?

A We would be renting it to anyone.

THE COURT: Even though they were opposed by most of the merchants; and even though the ideas they expressed were opposed to Meier and Frank's and J.C. Penney's and Woolworth's and Newberry's, that wouldn't make any difference?

THE WITNESS: No, sir. Your Honor, we—no merchant controls the operation of Lloyd Center or its policies as far as control.

THE COURT: I didn't hear what you said.

THE WITNESS: No merchant or group of merchants control Lloyd Center as to what we feel should be done. It's our property. We have had one of our doctors over there complain mightily because we rented the auditorium to some group he felt was subversive. We say unless we know it is, the instructions to our people is that they are to rent it to anyone unless we know for a fact and it's checked up and I get word, I refer it to the FBI whether it is that kind of group.

[93] THE COURT: You check with the FBI on people who apply to rent the auditorium?

THE WITNESS: No, your Honor, unless they have some strange things. We do have a list that is put out by the FBI of known organizations. I don't know of them operating in Portland for one thing. But, if there was some strange name we don't know, we would look it up, yes, sir.

THE COURT: Anything further?

THE WITNESS: Even then, your Honor, we take a chance on those unless it was just definite word.

Q (By Mr. Miller) If the plaintiffs wanted to handbill within the auditorium, you would have no objection to that?

A No, no. That is done in the auditorium.

THE COURT: Anything further?

MR. MILLER: Nothing further.

MR. NEIL: I have nothing further.

THE COURT: You wanted to ask some questions and get some answers from Mr. Tanner. I will let you do that.

Mr. Tanner, do you think you were advocating the overthrow of the Government or anything illegal when you were passing out these leaflets?

MR. TANNER: No, I don't think I was.

THE COURT: Did you think it could be so interpreted?

MR. TANNER: Possibly, yes.

THE COURT: You think it is possible to interpret it that [94] way. I asked the questions for you. Now, you have the answer.

What else have you got?

MR. MILLER: As an offer of proof, your Honor, we would like to ask counsel to agree that at the meeting that was held at Centenary Wilbur Church that was be-

ing advertised by the leaflets in this case, there were draft cards that were turned in by people who came there and they did that for the purpose of disposing of their draft cards.

THE COURT: How many draft cards?

MR. MILLER: In the deposition, your Honor, they stated draft cards were turned in. The witnesses did not say how many were turned in.

I would also like to demonstrate when the draft cards were turned in, they were sent back to the Draft Board involved. That was the purpose of having them turned in.

THE COURT: Have you got any of the people from the Draft Board to testify as to how many cards they received, if any?

MR. MILLER: No, we don't, just the plaintiff's testimony.

THE COURT: The reason I asked you this, I think I know a little about this particular activity. We have found when there are as many as 200 so-called draft cards dropped into a bag, when they are checked by the FBI and others, it is found there are not more than four or five. They are usually laundry tickets and driver's licenses and all the other things. Of the five or six [95] that are dropped in the bag that are authentic, most of the people whose names are on the cards call up the Draft Board or FBI and tell them they have lost their cards. So, I don't know whether these people really throw in draft cards. I have my idea that the reason why these so-called leaders don't put in their draft cards, but put in their driver's license, they want to continue to be leaders.

MR. MILLER: I don't blame them.

MR. NEIL: Well, your Honor, we object to this as irrelevant. The leaflet itself is the measure of whether it is a violation.

THE COURT: I am going to reject the offer of proof.

MR. MILLER: Could we offer as part of the offer of proof the deposition of Donald Tanner?

THE COURT: All right.

MR. NEIL: I object to it for the same reason. In the deposition, I allowed them to go into this. I don't think it is admissible either.

THE COURT: What else do you have?

MR. BLACK: That's all, your Honor, evidentiary-wise. I would like to make a statement about the nature of our case though.

THE COURT: All right. Are you going to submit the case today?

MR. MILLER: I submitted a 25-page brief.

[96] THE COURT: I will take a look at it. You are not going to submit anything more?

MR. BLACK: I am not going to submit anything more.

I would be glad to talk a moment or two and then just submit the brief.

MR. NEIL: We also would want to send up a supplemental brief. We have sent in a trial brief. My brief was handed to your secretary 1:30 yesterday.

* * * *

[113] MR. MILLER: If your Honor please, with apology, I would like to ask—would like to ask counsel to agree to one more matter of evidence.

THE COURT: Go ahead.

MR. MILLER: That is, if Mr. Horn was called to testify, he would state that at the entrances to Lloyd [114] Center, there are placards which contain the following language:

> "Notice areas in Lloyd Center used by the public are not public ways, but are for the use of Lloyd Center tenants and the public transacting business

with them. Permission to use that area may be revoked at any time, Lloyd Corporation, Ltd."

MR. NEIL: I think it is irrelevant. I won't stipulate to it, your Honor, because I have heard this contention for a long time. I have been over there looking for them. I can't find them. So, I am not willing to stipulate to that.

THE COURT: Let Mr. Horn testify to it.

Where are those located, Mr. Horn?

MR. HORN: In the entrances, your Honor, to the center. They are embedded in the concrete and in the cement. There are plaques about this size in the metal (indicating) embedded in the entrances.

THE COURT: Where is the entrance?

MR. HORN: Well, you would find it between Goldberg's and the stairways.

THE COURT: Where?

THE WITNESS: One entrance would be the entrance by Goldberg's.

THE COURT: I know that. I eat there a lot. I have [115] never seen them.

THE WITNESS: It's across the street from Halsey —if you had crossed at Halsey, you would have seen it before you came in. They are supposed to be there. I didn't check. I haven't checked for a long time if they are all there yet. They were all placed at all of the entrances. I think they are all there.

THE COURT: I assume there are some in those places.

Do you admit that the sidewalks are places of public accommodation and handbilling may be distributed on the sidewalks?

MR. BLACK: Public sidewalks, yes.

THE COURT: That is between the two sections of Lloyd Center?

MR. BLACK: Across the street.

THE COURT: Across from Payless Drug Company?

THE WITNESS: Yes.

MR. BLACK: One is Halsey and the other one is Weidler that transfers the streets in an easterly-westerly direction. Then there are several other streets. It's set forth by the way in the pretrial order. It is admitted. In other words, the center includes the private property that Mr. Neil has been talking about.

THE COURT: Has there been any picketing in the [116] mall itself, Mr. Horn, in the main portion?

MR. HORN: Yes, your Honor. There were a couple before the Supreme Court Logan Valley case, there were a couple then. But, then they didn't stay but for a little while. But, about a month ago, there was one union objecting to Meier and Frank selling a certain pair of pants. So, they picketed in front of the Meier and Frank store and down below on Multnomah Street. They were picketing and we asked them if they would not picket and obstruct the doorway. We preferred if they would picket outside. We did not tell them they could not do it in the first place.

THE COURT: That was the ILGWU?

THE WITNESS: The Garment Workers Union from somewhere. I don't know if it was even in Portland. I think it was from San Francisco. In any event, they picketed. They did it only for a few minutes and then left. We did not interfere.

MR. BLACK: That was with regard to merchandise being sold at one of the stores?

MR. HORN: Meier and Frank, yes.

THE COURT: I know there was a picket line for several years in front of Payless Drug Store, wasn't there?

MR. HORN: Yes, your Honor. It was because the drug store people weren't union.

THE COURT: I am not interested in that.

[117] MR. HORN: Yes, they were there a couple of months in front of Pay 'N Save Drug.

MR. BLACK: Pay 'N Save, it is?

MR. HORN: Pay 'N Save; you know it's next to the First National Bank. They picketed on the sidewalk. They finally left. We didn't have anything to do with it.

THE COURT: The case is submitted. The defendant will go forward and put in its brief because the plaintiffs, as I understand it, waives its first brief.

MR. NEIL: We will stand on the brief we have already submitted.

THE COURT: You are not under any obligation to submit a brief. If you want to submit it, do it within the next two weeks. Then if you submit a brief, Mr. Neil will have one week within which to answer it. If you don't submit a brief, Mr. Neil is foreclosed from filing anything further. Is that all right?

MR. NEIL: Yes, sir.

THE COURT: The case is submitted. All witnesses are excused.

* * * * *

[118]

REPORTER'S CERTIFICATE

I, the undersigned, Jerry C. Harris, Official Court Reporter of the United States District Court, for the District of Oregon, do hereby certify that on the date set forth on the title page of this transcript, I reported in stenotype the proceedings occurred in the transcript appended hereto; that I thereafter caused my stenotype notes to be reduced to typewriting under my direction, and that the foregoing transcript consisting of pages 2 to 117, both inclusive, constitutes a full, true and accu-

rate transcript of said proceedings so reported by me on said date as aforesaid.

Dated at Portland, Oregon, this 9th day of February, 1970.

/s/ Jerry C. Harris
JERRY C. HARRIS
Official Court Reporter

PLAINTIFFS' EXHIBIT NO. 1

14 November 1968 * 14 November 1968

What Is The Resistance?

Guns and bombs cause death, fear and anger, which create more guns and bombs. Guns and bombs do not kill "communism" nor "nationalism"; guns and bombs kill people. There must be another way to protect democracy . . . or we will find no "protection", only the destruction of man.

The Resistance is people enough concerned about the guns and bombs of war (Vietnam, Guatemala, Laos) to deal with the problem actively. The Resistance is the young man who refuses to cooperate with the Selective Service, a tool of killing in a fashion only a little more politely than a gunman gone wild on the streets. The Resistance is people who refuse their taxes (82% for war in '68). The Resistance is you and me, aiding and abetting these people, all people to live in brotherhood and peace.

14 November 1968 * 14 November 1968

What is this day?

Today we talk about the draft, which means we are also talking about war . . . though we would rather talk about peace . . . and about our country's killing of people around the world . . . though we would rather our country fed them.

And as we talk, so we must act:

COME JOIN US TODAY! LEAVE YOUR SCHOOLS, LEAVE YOUR JOBS, BRING YOUR CHILDREN FROM YOUR HOMES!

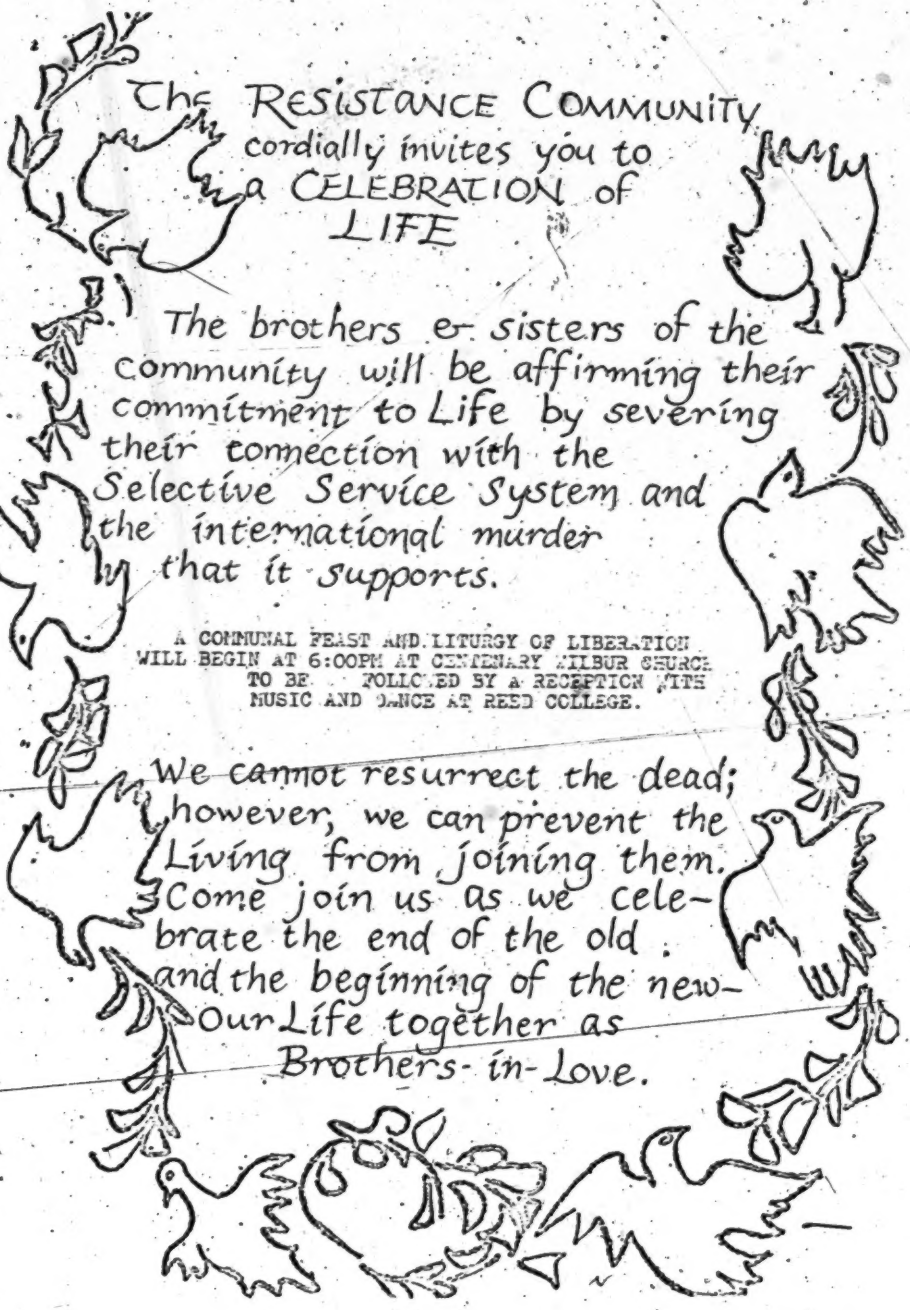
Join us! in talking to all our neighbors, to everyone passing in the streets.

And come to a life celebration and communion this evening, a time to break bread, share wine and the kiss of peace.

14 November 1968
Centenary Wilbur Church
215 SE 9th
Portland
at
6:00 p.m.

14 November 1968 * 14 November 1968

Thou Shalt Not Kill
. . . not any one . . .



The RESISTANCE COMMUNITY
cordially invites you to
a CELEBRATION of
LIFE

The brothers & sisters of the community will be affirming their commitment to Life by severing their connection with the Selective Service System and the international murder that it supports.

A COMMUNAL FEAST AND LITURGY OF LIBERATION WILL BEGIN AT 6:00PM AT CENTENARY WILBUR CHURCH TO BE FOLLOWED BY A RECEPTION WITH MUSIC AND DANCE AT REED COLLEGE.

We cannot resurrect the dead; however, we can prevent the Living from joining them. Come join us as we celebrate the end of the old and the beginning of the new- Our Life together as Brothers-in-Love.

PLAINTIFFS' EXHIBIT NO. 2

LIFE CELEBRATION

10 AM PART ONE NEIGHBORHOOD INVITATIONAL LEAFLETTING

3 PM PART TWO DRAFT BOARD CONVERSATIONS

6 PM PART THREE POT LUCK DINNER at Centenary Wilbur Church

7:30 PART FOUR COMMUNION at Centenary Wilbur Church

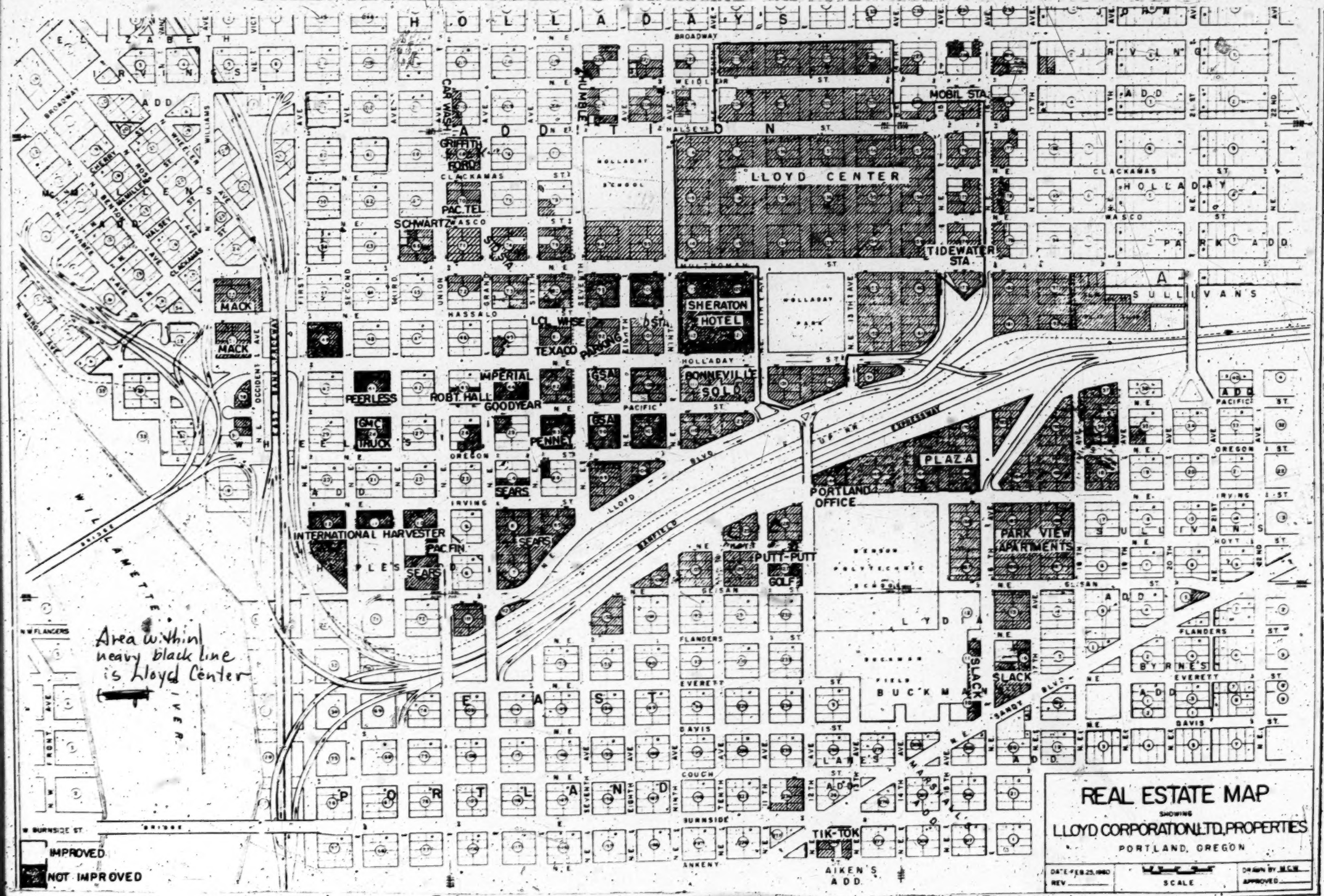
9 PM PART FIVE DANCE OF LIFE AT REED

Pltf Exhibit #2
Case Civ 69-427
Pptr
Date Clerk

The Resistance
215 S.E. 9th
Portland
232-5946

282-2511

PLAINTIFFS' EXHIBIT NO. 3



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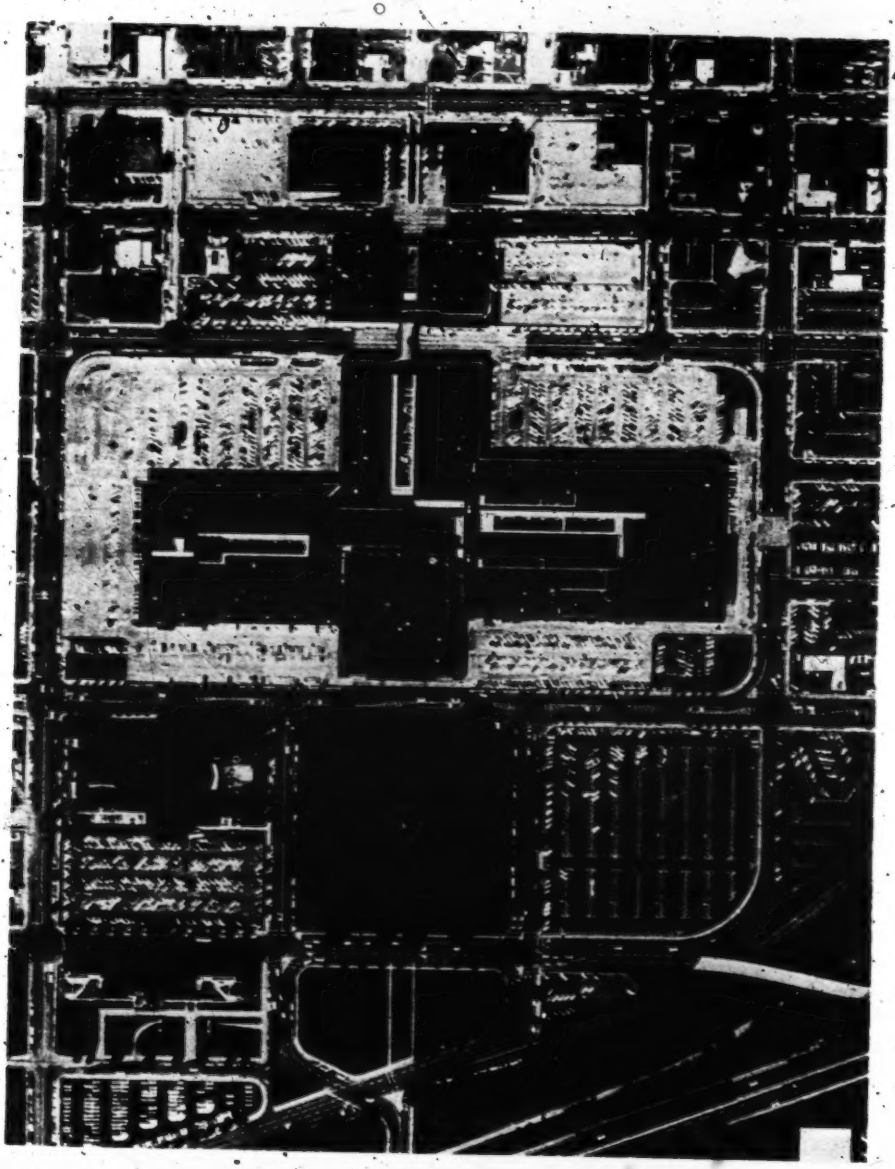

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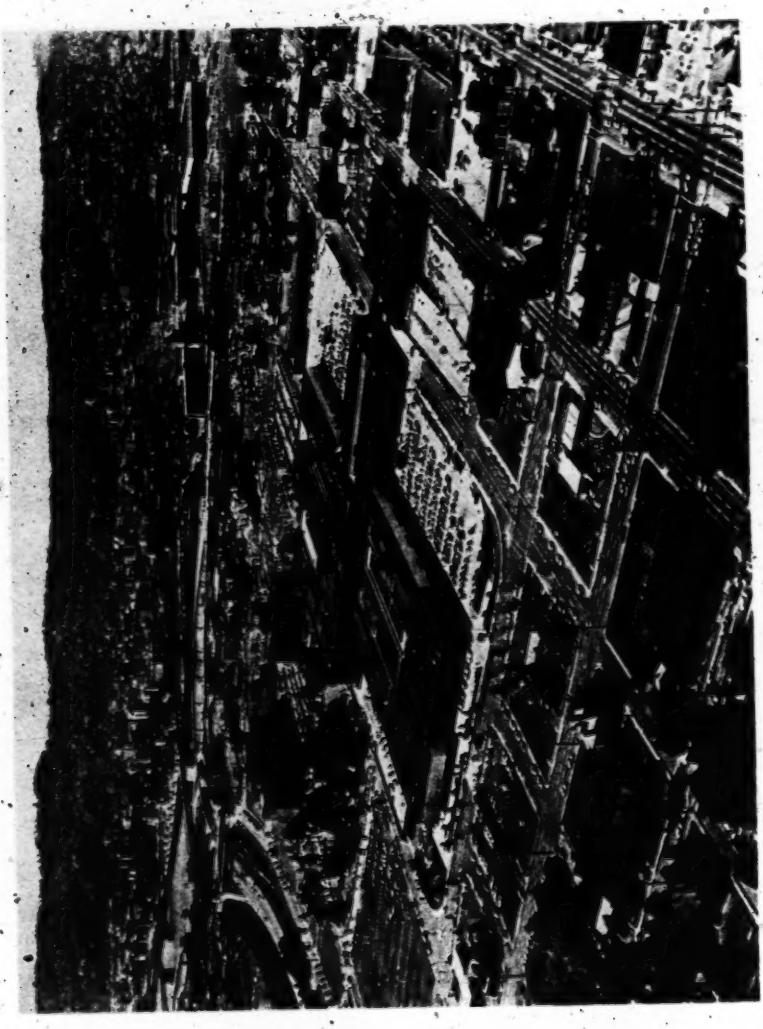


PLAINTIFFS' EXHIBIT NO. 6

November 26, 1968

Chief Donald McNamara
Central Precinct
209 S. W. Oak Street
Portland, Oregon

Dear Sir:

We would appreciate it if you would process Kenneth P. Boone for a special Police Officers Commission to be used ONLY on the property of the Lloyd Corporation, Ltd., to wit: Lloyd Center which covers the area from N. E. Ninth Avenue to N. E. 16th Avenue and from N. E. Broadway south to Sullivans Gulch, Portland.

It is understood that the Police Bureau of Portland will not accept any responsibility for the actions of our employees.

Special Commission and Badge Number _____ issued to Kenneth P. Boone is to be returned to the Portland City Chief of Police on the date the Commission expires for renewal or to be returned at such time his position terminates with Lloyd Corporation, Ltd.

Yours very truly,

Clifford P. Boss
Lloyd Center Special Police

I, Kenneth P. Boone, agree to release said Commission and Badge Number _____ to the Portland City Chief of Police Office at such time as my Commission expires or my employment has been terminated with Lloyd Corporation, Ltd.

_____

PLAINTIFFS' EXHIBIT NO. 7

Form 5-208 Rt. Thumb

CITY OF PORTLAND, OREGON
Department of Public Safety [Print]
Bureau of Police

This Certifies That Clifford P. Boss Is a Duly Commissioned SPECIAL POLICE OFFICER of This City and Is Invested With Full Police Authority.

Witness My Hand This 23rd Day of April 1969
This Commission Expires One Year From Date

/s/ Clifford P. Boss
Signature of Officer

/s/ Donald S. McNamara
Chief of Police

RESTRICTIONS None

AFFILIATED WITH Lloyd Center

HOME ADDRESS 4829 S E Gladstone

PLAINTIFFS' EXHIBIT NO. 8

COPY COPY COPY

MEMO

February 7, 1962

TO: H. J. Sundt
Bert Smith
Captain Boss
Head Office—Los Angeles

In some instances we perhaps have not implicitly covered the matter of arrest.

If a felony has been committed in the presence of the officer, or the officer has every reason to believe that a suspect participated in a felony, arrest is proper.

If a misdemeanor is committed in the *presence* of the officer (he must see it), arrest is proper.

We have other instances wherein there is no felony and no misdemeanor (misdemeanor includes disturbing the peace such as fights and riots), but there is an activity we do not wish to have carried on in the Center and, because the Center is private property, the activity is a trespass. These are the instances wherein individuals pass out cards and handbills, distribute samples, solicit; parade with a sandwich board and, as could happen, parades in front of the auditorium by objectors to a meeting being conducted.

In these instances we should, as we have done in the past, tell them we do not permit this and ask them to leave. This should be done politely but at the same time so firmly that they could feel they might be arrested. If they do not leave, you should say, "Sir (or Madam) you

are trespassing on private property. May I have your name and address?" Then, inform them that if they do not leave a warrant will be issued for their arrest. If they will not give their names, inform them that "we will ask that a John Doe warrant be issued for your arrest."

Whenever possible in arrest cases, call the City police —and definitely do so whenever it appears necessary because of the number of people involved or the seriousness of the commotion being raised.

RICHARD C. HORN

RCH:ab

PLAINTIFFS' EXHIBIT NO. 9

December 8, 1964

TO LLOYD CENTER SECURITY OFFICERS:

RE: *Handling of Offenses at the Center*

The following is with respect to the performance of your duties at Lloyd Center. Needless to say, you should in every instance be courteous and avoid use of abusive language. Also you should avoid use of physical force, or threats of it, unless necessary to prevent injury to person or property and then only such force as is reasonably necessary under the circumstances.

A full written report of facts relating to offenses occurring during your tour of duty should be made to the Lloyd Center Office on the same day in which the incident occurs.

Listed below are some of the offenses with which you may have to deal.

SHOPLIFTING

Shoplifting is the theft of merchandise from a retail store by a person posing as a customer, during the time the store is open for business.

Upon receiving a complaint, see that regular City police are summoned immediately and avoid making an arrest yourself, if possible. Rather, attempt to detain and interrogate the suspected shoplifter in a reasonable manner until the regular City police arrive. Be courteous but firm. Avoid use of physical force, if possible. Turn matter over to regular police upon their arrival.

If necessary to avoid escape of shoplifter, you may make arrest if following conditions are met:

You should *not* arrest unless:

(1) The thief is outside of the store with the stolen merchandise; and

(2) The store manager or other responsible employee agrees to file a written complaint with police.

You should:

(1) Join with the complainant in placing identifying marks on the stolen property and instruct the complainant to preserve the evidence.

(2) Try to get an admission from the person arrested or some type of statement. Write this down, using "quotes", and file with Lloyd Center Office. Have person arrested sign statement if it appears feasible.

(3) Turn over person arrested to regular City police upon their arrival.

(4) Follow up to make sure that a proper complaint is filed with the police by the complaining merchant.

DRUNKENNESS

Do not interfere unless drunk is annoying Center patrons or otherwise disturbing the peace.

If you feel that the drunken person's condition is such that he is a danger to himself and others, you should summon City police and keep him under surveillance until they arrive. Then turn the matter over to them.

If, on the other hand, he appears harmless but nevertheless is sufficiently inebriated to be a nuisance or a disgrace to the Center, you should firmly but politely ask the drunk to leave the Center. You may lead him from the premises, but do not do so forcibly.

DISORDERLY CONDUCT

In the event that there are any fights, riots, or other actions disturbing the peace, your attitude should be one of settling the matter, and arrest should be avoided if possible. In such a situation use only such force as is necessary to prevent harm to person or property, and immediately summon the regular City police.

VANDALISM

You should, of course, exereise reasonable force to prevent damage being done to property in your presence. Regardless of whether the incident occurs in your presence, gather all pertinent facts. Obtain names, and addresses, of witnesses and, if possible, written statements from them. Get names and addresses of offenders, if you can do so. Summon the regular City police and report the matter to them.

TRESPASSERS

This includes persons whose conduct is such as to be offensive to patrons of the Center. For example, individuals passing out cards or handbills, distributing samples, soliciting, parading with a sandwich board, or picketing of the auditorium by persons objecting to a meeting being conducted would fall into this category. Another example is skaters who have not paid their admission fee.

In these instances, tell the offender politely but firmly that this is not permitted and ask him to leave. If he continues the offending activity, inform him that he is trespassing on private property and ask for his name and address. You may inform him that a warrant will be issued for his arrest if he does not leave. If they will not give their name and address, inform them that if they do not leave "we will ask that a John Doe warrant be issued for your arrest".

You may lead the offender from the premises, but do not do so forcibly.

Summon regular City police if difficulties are encountered. Do not make an arrest yourself unless necessary to protect persons or property from harm.

Try to avoid controversy and raise as little commotion as possible.

RIGHARD HORN

PLAINTIFFS' EXHIBIT NO. 10

Aud. 99-175-120
4-65 2M

OFFICE OF
AUDITOR OF THE CITY OF PORTLAND
PORTLAND, OREGON 97204

Room 202
City Hall

COPY CERTIFICATE

STATE OF OREGON,)
County of Multnomah,) ss
CITY OF PORTLAND,)

I; RAY SMITH, Auditor of the City of Portland, do hereby certify that I have compared the following copy of Section 16-613, TRESPASS, of Ordinance No. 76339, passed by the Council December 4, 1941, as in force and effect from December 19, 1963 to date of certification, with the original thereof, and that the same is a full, true and correct copy of such original SECTION 16-613, POLICE CODE and of the whole thereof as the same appears on file and of record in my office, and in my care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the City of Portland affixed this 6th day of November, 1969.

/s/ Ray Smith
Auditor of the
City of Portland

By /s/ Edna M. Cervera
Deputy

[SEAL]

Section 16-612. SALE OF CERTAIN FLASHLIGHTS PROHIBITED.

(Section 16-612 repealed by Ordinance No. 128270 passed December 19, 1968, effective January 20, 1969.)

Section 16-613. TRESPASS.

(New Section substituted for previous Section 16-613 by Ordinance No. 117794 passed and effective December 19, 1963.)

(a) It is unlawful for any person other than an officer on lawful business wilfully to trespass upon or damage any real or personal property of another.

(b) It shall be deemed a trespass under this section to enter or be upon any enclosed real property without the consent, express or implied, of the owner or lawful occupant of the real property.

(c) It shall be deemed a trespass under this section to enter or be upon any real property not enclosed when upon oral, written or printed notice of the owner or lawful occupant of the real property, the person entering or being thereon fails or refuses to depart therefrom immediately and remain away until permitted to return.

(d) Printed or written notices bearing the name of the owner or lawful occupant of the real property, posted by his authority in three conspicuous places upon the real property, and requiring all persons to forbear trespassing on the real property and to depart therefrom, is sufficient prima facie evidence of notice mentioned in subsection (c) of this section. (ORS 164.460 (2)).

(e) As used in this section, "owner or lawful occupant" includes an employee or agent who is authorized by the owner or lawful occupant to exercise control of the real property.

(f) As used in this section, an area is "enclosed" if it is not then made available by the owner or lawful occupant of the real property for entry or use by the public and it is

(1) Within a building or structure, or part thereof, or

(2) Surrounded by a wall, fence, bars, gate, hedge, chain, rope, barricade, or similar obstacle, or any combination thereof.

(g) For the purpose of this section, an area is not enclosed, though it is within a building or structure, or part thereof, unless it is included in the meaning of "enclosed" as defined in subsection (f) of this section.

PLAINTIFFS' EXHIBIT NO. 11A-V

A. Looking westward on N.E. Multnomah Street

B. Entrance to interior lower level parking from N.E. Multnomah Street

C. Upper level parking area, on south side of Halsey and east side of 9th Avenue, looking eastward taken from NW corner of the central complex

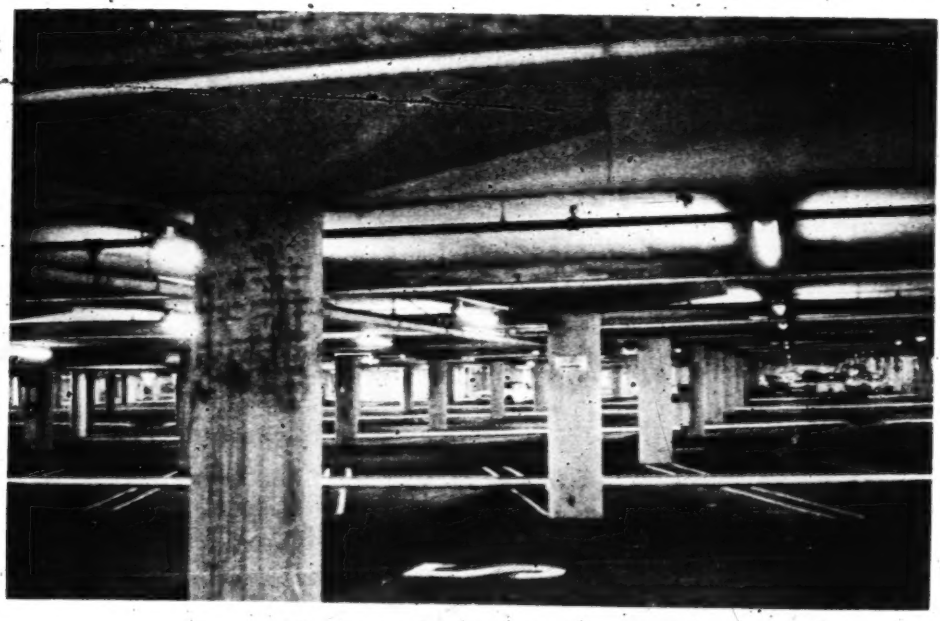
D. Same parking area as C, looking west from auto entrance from Halsey Street

E. Upper level parking area on south side of Halsey and west side of N.E. 15th, looking SE across Halsey Street

F. Same parking area as E, looking west toward North Mall shops

G. Looking east at crosswalk and overpass over N.E. Halsey

H. Looking south on crosswalk over N.E. Halsey



I. Lower level interior parking

J. Lower level interior parking

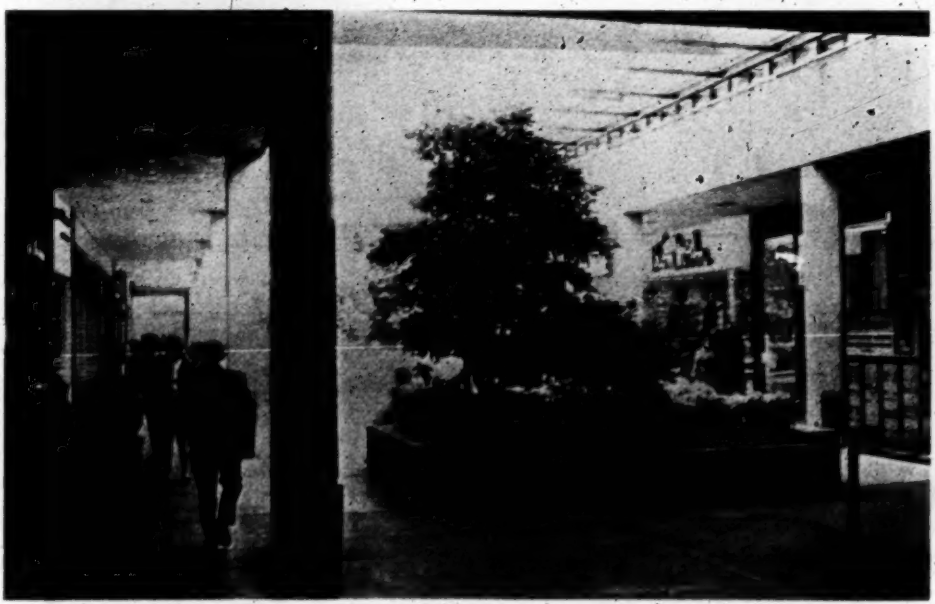
K. Ice rink, looking SW from main level bridge

L. Looking south from upper level across bridge over ice rink toward M & F entrance

M. Closer view of same M & F entrance shown in L

N. Bridge over ice rink, looking toward North Mall

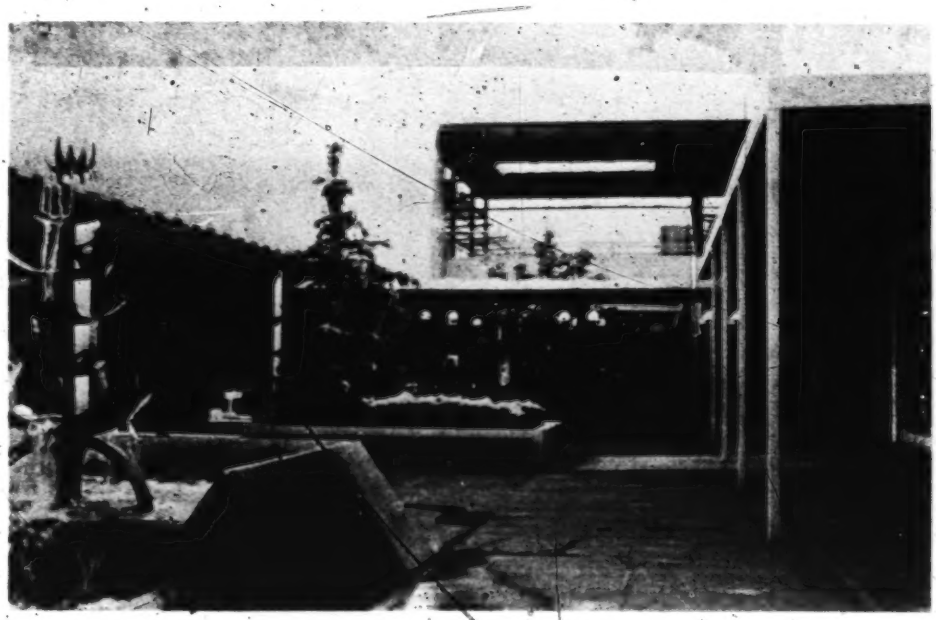
O. Mall above west end of ice rink looking north toward access to parking area shown in C and D



P. Looking north on North Mall from Central Mall

Q. Central Mall looking NE from east of ice rink

R. East Mall



S. West Mall looking eastward

T. West Mall looking eastward toward Central Mall from upper level

U. East Mall looking westward toward Central Mall from upper level

V. East Mall looking eastward

PLAINTIFFS' EXHIBIT NO. 12

11-14-68

Mr. Horn:

At 12:45 p.m. Ford accomined one of these subject's passing out pamplets to the L. C. Main Office.

I asked him for his name and he refused. I told him we may have to get a "John Doe" warrant for his Arrest —if necessary.

He wanted to talk to you as he was informed that you had granted their permission in the Center.

He agreeded to stay on the sidewalk until 1:30 p.m. and come back here at your office to see you.

/s/ C. P. B.

PLAINTIFFS' EXHIBIT NO. 14

[1]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 69-127

DONALD M. TANNER, BETSY WHEELER and SUSAN ROBERTS,
Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,
Defendant.

DEPOSITION OF CLIFFORD P. BOSS
Taken in behalf of plaintiffs

* * * *

[3]

CLIFFORD P. BOSS

was thereupon produced as a witness in behalf of plaintiffs and, having been first duly sworn by the Notary, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEIL:

Q Captain, I think you understand that I am the attorney for the plaintiffs—

A Yes, sir.

Q —two of whom are sitting here?

A Yes, sir.

Q And I am going to ask you some questions. If you

don't understand my question, please feel free to ask me to clarify it. The ideal here is that I understand what you are saying and you understand what I am asking.

Q What is your occupation, Captain?

A I am a captain in charge of security police at Lloyd Center.

Q And you are employed by the Lloyd Corporation, are you not?

A Yes, sir.

Q How long have you been in that position?

A Since April the 1st, 1960.

Q And I notice you are wearing a uniform here today. Is that the normal uniform you wear on the job?

[4] A Yes, sir.

Q Is that uniform different in any respect than the City police uniform?

A Yes, sir.

Q In what respect is it different?

A We have "Special Police" on the shoulder; we have—

Q Would the word "Portland" appear underneath it; is that correct?

A Right. Then we have a silver badge where the City is gold. The buttons on our uniform are all silver where the City police are all gold. The City has a two-inch stripe down the britches that we don't have.

Q I notice you are wearing a holster. Do you carry a gun on the job?

A I do.

Q And do the uniform guards that work under you also carry guns?

A Yes, sir.

Q What is the relationship of yourself and the security guards under you to the Portland City Police?

A Well, we are special police and we do not have

the authority to work any place except in the Lloyd Center.

Q And do you hold the special police status by virtue of a commission of some sort?

A Yes, sir.

[5] Q And that is in writing?

A Yes, sir.

Q Where do you keep yours?

A In my wallet.

Q Could I see it, please?

A Yes, sir. Here is my City and that is my State, retired (exhibiting documents).

MR. NEIL: I don't want to take these away from you for copying. Could we make copies of these?

MR. MILLER: I think so.

MR. NEIL: Why don't you do that. I would like a copy of both of them, and if there is anything on the reverse side, also on the reverse. Why don't we wait, to facilitate this, and just agree that these will be marked and we can ask him questions from the originals.

MR. MILLER: I am trying to get it out of here so you don't have to—

THE WITNESS: That is the only one that has anything to do with the City.

MR. NEIL: Could I see the State, too?

MR. MILLER: Would you take that State one out, Captain.

Off the record.

(Discussion off the record.)

Q (By Mr. Neil) Now, Captain, we will have copies made of [6] these and I am referring now to the one that is entitled, "City of Portland, Oregon, Department of Public Safety, Bureau of Police." I notice it is dated April 23, 1969. Are these renewed annually?

A Yes.

Q And have you had one like this for each year since

you have been employed by the Lloyd Corporation?

A Yes.

MR. NEIL: I will ask that a copy of the City commission be marked Exhibit 1 to this deposition.

(Photocopy of document was marked DEPOSITION EXHIBIT NO. 1, Boss deposition.)

Q Now, the other document, Captain, referring to the Department of State Police, designates you as a sergeant in the Department of State Police Reserves. Does this status have anything at all to do with your duties at the Lloyd Center?

A Not the least. That is just a retired card, I am retired now.

Q Were you formerly with the State Police?

A Yes.

MR. NEIL: I will ask that this document or copy of it be marked as Exhibit 2 to this deposition.

(Photocopy of document was marked DEPOSITION EXHIBIT NO. 2, Boss deposition.)

Q Have members of your security force or yourself had occa- [7] sion to either make arrests or to sign complaints causing arrests—

A Yes.

Q —during your tenure?

A Yes.

Q In what kinds of cases, for example?

A Mostly shoplifting, juveniles, mostly shoplifting.

Q And if juveniles are doing something other than shoplifting, what would you be referring to?

A We would just take them into custody or ask them to stand by until we call the juvenile officer, City of Portland.

Q Would this be when they are engaged in some sort of misconduct—

A Yes.

Q —on the Lloyd Center premises?

A Yes.

Q For example, what types of things?

A Oh, loitering or—you mean besides shoplifting?

Q Yes.

A Oh, where they would be causing a disturbance, like dumping over garbage cans or hollering or making a disturbance or anything of that nature.

Q Have you or any members of the security force ever arrested anyone for refusing to leave, that is, for trespassing or disorderly conduct?

[8] A (Shaking head.)

Q What is your answer to that one?

A No.

Q Have you ever arrested or signed a complaint against anyone for distributing literature on the premises?

A No.

Q Or for selling goods on the premises which shouldn't under your rules be sold there?

A No.

Q Do your men receive any form of written instructions as to how they are to conduct themselves?

A Yes; they—we have received instructions from Mr. Horn here and instructions are in our office.

Q In written form, is that correct?

A Yes.

Q And do those instructions include comments on powers or duties with respect to arresting people or making charges?

A Yes.

Q Have you or your men ever been advised as to what the policy of the Lloyd Center is with regard to the distribution of non-commercial materials in the public areas, that is the walkways, malls and so forth of the Lloyd Center?

A Yes.

Q Is that policy written or has it been stated to you orally?

[9] A It has just been orally to us.

Q And who gave you that policy?

A Mr. Horn.

Q And what is the policy?

A I can't tell you what the policy is word for word, but we have been instructed by the management not to let people deliver literature of any nature in the malls in the Center.

Q Does that also go for pins, medallions and things like that?

A Yes.

Q Have there been exceptions to that policy?

A Yes, sir.

Q Can you think of some?

A Yes. The only ones that I know of is the Foreign Legion poppy—

Q The American Legion?

A Yes, that's the only one.

Q Have the Volunteers of America or the Salvation Army been allowed to solicit in the public areas of the Lloyd Center?

A Yes, they have. They are stationed at a certain post. They don't loiter in the malls or go up and ask anybody for anything. They have regular points that they work from, certain areas where they ring their bells from. They don't move around in the Center.

[10] Q You don't really mean to say, do you, that they don't ask anybody for anything? When they ring their bells they are soliciting contributions, aren't they?

A Yes, but I mean they are in one certain area that they stay in; they don't go up and down the malls.

Q Is that true also of the Salvation Army?

A That is true with the poppies, also. They have tables set in a certain area and they stay in a certain

area and sell these poppies.

Q About this time of the year downtown here I have seen on occasion young girls selling Rose Festival pins on the street corners. Has that ever occurred at the Lloyd Center?

A Not to my knowledge.

Q You have had political rallies from time to time in the mall areas of the Lloyd Center, have you not?

A Yes, sir.

Q And has any literature or buttons or anything like that ever been distributed, to your knowledge,—

A No, sir.

Q —in connection with those rallies?

A That's right.

Q What about the Jehovah's Witnesses and their magazine called Awake, has that ever been sold or distributed at the Lloyd Center?

A Not to my knowledge.

[11] Q To your knowledge has any representative of the Jehovah's Witnesses ever attempted to do so?

A No; I can't say that I can recall.

Q Now, coming to November 14, 1968, which is the date on which the distribution in question here occurred, did you see literature that was being handed out for awhile that day at the Lloyd Center?

A I saw them hand out the literature.

Q All right.

A But I didn't read it.

Q All right. Did you pick up a copy of that from anyone?

A No, sir.

Q And who did you see hand out the literature? Did you see these two people sitting here, Miss Roberts and Mr. Tanner, hand out the literature?

A No, I don't think I did.

Q You saw some other people doing it?

A I saw a young fellow standing in—at the south

end of the bridge, which is the north door of Meier & Frank, on the mall level and he was—there was an officer with him by the name of Ford and he was handing out literature and I saw Ford go up to him and I went over and listened to the conversation.

Q Before I ask you about that, how long a period was it you saw this young man distributing literature?

[12] A Oh, it was just a couple minutes. I was on the other side of the bridge.

Q Was he moving around or was he standing in one place?

A I can't remember that. He was standing—when I got over there he was standing right in the door—or right on the sidewalk in front of the door.

Q Was traffic blocked by this?

A No.

Q There wasn't any demonstration—

A Oh, no.

Q —or anything going on, was there?

A No, not at any time.

Q Now, you say you were present when Mr. Ford—is it Mr. Ford?

A Officer Ford.

Q —Officer Ford talked to this young man; is that correct?

A Yes.

Q What conversation did you hear?

A I heard Ford say that we are not permitted to allow anyone to hand out literature in the Center, and while he was talking there was another gentleman came up, I don't know who he is, he was a well-dressed man between 35 and 40, and he also had some paper in his hand, some literature in his hand.

Q And that man remained present during the rest of the conversation?

[13] A Yes.

Q What else was said? Officer Ford told him the policy and what else was said?

A Well, this gentleman standing there stepped up and I—I can't remember what the exact words were that I had with this gentleman, but I assumed that he was one of the leaders there and I told him, I said, "We are not permitted by the Center to let anyone deliver pamphlets in the Center," and at that time I—it was just—just a very few moments there and I said that "If you want to obtain permission to deliver, you would have to get ahold of Mr. Horn, who is the manager of the Center," and he asked me where he was—where his office was and I told him, and at that time I asked him what his name was and he refused to give me his name and I said, "If you want to make an appointment, I will make an appointment for you to see Mr. Horn," and it was agreed upon that he would contact Mr. Horn at 1:30 at Mr. Horn's office, and he was shown as to where—how to get to Mr. Horn's office and then I went on my way.

Q Did you tell either of these persons or did Officer Ford tell either of these persons that they should leave?

A No.

Q Was anything said about them being prosecuted if they should continue to distribute literature?

A Only to this extent: We were advised by Mr. Horn that [14] there would be no arrests, and there was no arrest.

Q You mean about this particular incident?

A Yes.

Q When had he advised you that?

A Well, earlier in the day.

Q Mr. Horn had some word that these people were coming that day; is that right?

A That is right.

Q And he had told you what, now?

A He told us that there would be no arrests made.

Q What else did he tell you?

A He told us to be very polite and ask them to go out on the sidewalk if they wanted to continue—

Q All right.

A —with their handing out pamphlets.

Q And what did he say that you should do if they continued to distribute?

A Just ask them to leave and if—if there wasn't any —any violence or anything not to do anything—not to do anything, that we could—if violence occurred that we could—we would have to get a warrant.

Q All right. But if they continued to distribute after being told not to, your instructions were to do nothing with respect to that?

A Just ask them again to go out on the sidewalk.

[15] Q Did he say to report back to you if that should occur?

A Not that I can remember of.

Q In any event, these people did stop distributing after this discussion; isn't that correct?

A Yes, they did, and they went out on the sidewalk.

Q Now, did you have any further contact about this distribution that day?

A No, sir.

Q You didn't talk to anyone else by telephone or any person either with Lloyd Center or otherwise about this?

A No, I didn't.

Q Did anyone—

A I did—now, wait a minute; I did—I went to the office later and asked if this party had contacted Mr. Horn, but that is all there was to it; I never contacted any—

Q Were you told that he had?

A No; I didn't—I wasn't told anything. They didn't know whether he had come up there or not.

Q Did you make any report on the activities of this day with respect to this distribution?

A Only in my notebook is all.
Q In your notebook?
A Yes.
Q What do you do with your notebook?
A Well, I have a notebook and I put in every—what trans- [16] pired during the days.
Q And when do you make that entry, at the end of each day?
A No, I make the entry as it happens.
Q Where is that notebook now?
A It is in my pocket.
Q Could I look at it as to the page in question?
A Now, that is for this certain date, now?
Q Yes. I am only interested in what we are dealing with in this case, that is, the activities of November 14, 1968.

(Witness hands notebook to Counsel.)

Q Thank you. Where do I start?
A Right there (indicating).
Q You can probably read this better than I can. Why don't you read to the reporter the entries that have to do with this incident, I think starting there at 10:00 a.m.
A At 10:00 o'clock I was called into Mr. Sundt's office.
Q S-u-n-d-t?
A Right.
Q Just read it like it is there.
A At 10:00 o'clock was contacted by Sundt who advised that the American Civil Liberty Union are sending a group of people to hand out literature in the Center.
Q Go ahead.
A There will also be City officers around if trouble starts.
[17] Q Let me digress at the moment. Were there any City police officers called on that day?

A No.

Q All right, continue reading, if you will.

A Officials of union went to the Chief of Police and advised him that they were going to hand out literature in the Center. Now, this Doc—

MR. MILLER: Go ahead.

Q Just go ahead and read it and then explain.

A Doc requested three men to be contacted for extra duty.

Q I will digress. Who is Doc?

A Doc is Mr. Sundt, that is his nickname.

Q Who is Doc Sundt?

A Doc Sundt is the assistant manager of the Lloyd Center.

Q I see. Does that refer to three extra men employees of the Lloyd Center or regular police officers?

A No, that is my men.

Q Did you have three extra men come on?

A I did.

Q Do you remember who they were?

A Yes, Lieutenant Gloot, Sergeant Pulliam and Officer Ford.

Q And who were the regular men on duty aside from those people on this day?

A Myself, Officer Morris and Officer Unruh.

Q How do you spell that last name?

[18] A U-n-r-u-h.

Q Going back to your notes, is that where your notes end with respect to this day about these activities?

A No.

Q Could you read the next entry that has to do with these incidents?

A The next entry is at 11:20, hearing room with officers; obtained information from Mr. Horn regarding subjects delivering pamphlets in Center.

Q Is that continued?

A No, that is all.

Q What does that mean, to the best of your recollection?

A That is just what I told you before. Mr. Horn advised us that there would be no arrests made and that we would treat these people with all the respect that we would anybody.

Q So far you hadn't seen anyone distributing out there yet at this point?

A No, no.

Q Well, are there any other entries in your notes here that have to do with this day's incident?

A Yes, this contact at 12:45.

Q Why don't you read that one, then, into the record.

A 12:45 p.m., contact Ford—that is Officer Ford—with subject handing out literature in the Center. Requested his name, which he refused. Made an appointment to have him [19] talk to Mr. Horn at 1:30 p.m.

Q All right. You have already told us about that?

A That is it.

Q Any other notes—

A No.

Q —in these notes that have to do with that?

A No, sir.

Q All right. Let me digress back again to your relationship to the City police. Are these documents you have already shown me the only commissions you have, or is there some other commission?

A No, that is all I have, sir.

Q And is it true that all of your Lloyd Center security people hold similar commissions from the City of Portland?

A Exactly like that.

Q With respect to the conversation you overheard between Officer Ford and another gentleman, did you state that you saw Officer Ford talk to him for awhile before you arrived?

A He was talking to him when I—I was on the other

side of the bridge, on the north side of the bridge, and I seen Officer Ford talking to this gentleman and I walked across the bridge.

Q So it would have been—

A What he said I didn't hear until I got up there.

Q So that conversation might have gone on for a couple three [20] minutes before you got there?

A Oh, probably two minutes.

Q Now, I asked you about what reports you made. Did any other of your force make reports to you or to anyone else about this distribution or these conversations on this day?

A Well, it would be hearsay if I said that because I —I never heard it myself.

Q Well, I would like to know if anybody made written reports?

A No, sir.

Q So you are telling me if any reports were made they were made orally; is that correct?

A Correct.

Q And by these officers to whom?

A Later that day Officer Ford contacted Mr. Horn. Now, what was said I can't answer; I can't tell you that.

Q All right.

A I don't know.

Q Is Officer Ford still with the Lloyd Center?

A Yes, sir.

Q How about Officer Pulliam, is he still employed by Lloyd Center?

A Yes, sir.

Q Now, have you told me about all the conversations that you participated in either orally or by telephone with respect [21] to this distribution on the 14th day of November?

A Yes, sir.

MR. NEIL: I think I have no other questions. Why

don't you tell him about waiving signing of the deposition.

MR. MILLER: Captain Boss, this deposition will be typed, and when it is typed you can read it and make sure that it is typed correctly, or at this point you can waive the reading of the deposition if you want to. It would be entirely up to you as to whether or not you want to read it and sign it and be sure that it is accurate or waive the reading.

THE WITNESS: I will read it.

—:— FURTHER DEPONENT SAITH NOT —:—

/s/ Clifford P. Boss
CLIFFORD P. BOSS

[Jurat Omitted in Printing]

PLAINTIFFS' EXHIBIT NO. 15

[1]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 69-127

DONALD M. TANNER, BETSY WHEELER and SUSAN ROBERTS,
Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,
Defendant.

DEPOSITION OF FRANCIS M. PULLIAM
Taken in behalf of plaintiffs

* * * *

[3]

FRANCIS M. PULLIAM

was thereupon produced as a witness in behalf of plaintiffs and, having been first duly sworn by the Notary, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEIL:

Q Sergeant, my name is Carl Neil, as you know, and I am one—or I am the attorney for the plaintiffs in this case called Donald Tanner and others versus the Lloyd Corporation, and I am here today to ask you some questions about events that occurred at the Lloyd Center

on November 14, 1968, of which you may have some knowledge. If I phrase a question unclearly or in a way that you do not understand it, please feel free to ask me to clarify it and I will certainly try to do so.

I take it you are employed as a security guard by the Lloyd Corporation; is that true?

A That is true.

Q And you hold the rank of sergeant in the security force?

A Right.

Q And how long have you been employed as a security guard by the Lloyd Corporation?

A Since April 3, 1960.

Q And I take it your duties are performed entirely on the premises of the Lloyd Center?

[4] A Yes, that is right.

Q I notice you are in uniform today and you are wearing a holster and pistol.

A Uh-huh.

Q Is this the type of clothing and equipment that you carry on your job?

A Yes, with one exception. I usually wear a different holster and pistol.

Q But you normally do wear a holster and pistol?

A Yes.

Q And you wear a uniform such as you have on today?

A Right.

Q And would you say it is a fair statement to state that your uniform is quite similar, in appearance at least to the general public, as that of a Portland City Police officer?

A In most ways, yes.

Q Do you hold a commission as a special police officer of the City of Portland?

A I do.

Q And is that in a wallet-sized form?
A It is a card.
Q Yes. Do you have this on your person today?
(Witness produces card and hands same to Counsel.)
MR. NEIL: Off the record a minute.

(Discussion off the record.)

[5] MR. NEIL: Back on the record. Let the record show that Sergeant Pulliam has handed me a card, which I think Counsel and I can stipulate is identical, with the exception of the name, to the card marked as Exhibit 1 in the deposition of Clifford P. Boss, and also with the exception that on the reverse side under the term "Restrictions" it states on Sergeant Pulliam's card, "Weapon good only while in uniform," whereas Captain Boss's has no restrictions on it.

Is that agreeable as a stipulation?

MR. MILLER: Yes.

MR. NEIL: Thank you, Sergeant (returning card to witness).

Q I take it, Sergeant Pulliam, you have held a similar commission to that ever since you have been a Lloyd Center security guard?

A That is true.

Q Now, were you on duty as a security guard at the Lloyd Center on November 14, 1968, when some distribution of literature took place?

A Yes, I was.

Q And could you tell me when you first were advised that such distribution would occur or might occur?

A It was somewhere—somewhere about 10:30 or 11:00 o'clock on that same morning.

Q And who told you?

[6] A Mr. Horn.

Q And can you remember in general what he told you at that time?

A Just that there would be some—or might be some leafleting or distributing of literature.

Q And what instructions did he give you, if any, at that time?

A That we were to ask the people to stop or ask them to leave the Center.

Q And did he instruct you as to what you were to do if they declined to obey those instructions?

A Ask for their names and address and ask that they cease to distribute literature, advise them that if they didn't that a—possibly a warrant might be issued for their arrest.

Q Now, did you thereafter observe anyone distributing leaflets that day at the Lloyd Center?

A Yes, I did.

Q And would you please describe what you first observed?

A Insofar as I remember, the person I observed distributing literature was a lady who was leading a dog, I believe.

Q And where was she distributing literature at the time, what part of the Lloyd Center?

A In the East Mall, as I recall, because that's where I was—that's where I was assigned.

[7] Q Can you place it as near any particular business?

A No, I don't recall exactly where it was.

Q And she was handing out leaflets, was she, just to passersby?

A Evidently, yes.

Q How long did you observe that going on?

A For a very short time before approaching her and speaking to her.

Q When you approached her and spoke to her, was anyone else present at the conversation other than yourself and this young lady?

A Not at first.

Q What did you tell this young lady when you approached her?

A Just as I mentioned before, that Lloyd Center did not permit distribution of literature of any nature and that—and I asked her to stop and—and/or leave the premises.

Q And what did she say?

A I don't recall what she said exactly. It was—she protested that she had a right to do so.

Q Did she, in fact, cease distribution?

A She did, yes.

Q And where did she go?

A She went to the telephone to call, she said, the American Civil Liberties Union.

[8] Q Did you observe what she did then?

A She was still speaking on the telephone when Mr. Horn approached me and I told him that the lady at the phone had been distributing literature.

Q And did further conversation ensue with her after she finished her telephone call?

A To the best of my recollection I didn't speak with her any more.

Q But Mr. Horn may have; is that what you are saying?

A Yes, that is true.

Q And had Mr. Horn arrived when you were still speaking to her?

A No.

Q So that when you first spoke to her and prior to the telephone call the only parties to that conversation were yourself and the girl; is that right?

A So far as I remember.

MR. NEIL: Counsel, can we agree that the leaflet being distributed then was one of those in question in this case, either the exhibit attached to the Complaint or the other one you furnished me?

MR. MILLER: Well, I don't—

MR. NEIL: Let's go off the record.

(Discussion off the record.)

Q Did you look at these leaflets at all, Sergeant Pulliam?

[9] A No, I didn't.

Q Do you know anything at all about their content or what generally they were?

A I don't know of my own knowledge, no.

Q Did you ask for this girl's name?

A I did.

Q Did you get it?

A No.

Q And you mentioned earlier that your instructions were to ask for the name and, if necessary, to mention that a warrant of arrest might be issued if one did not cease distribution. Did you state that to this girl that a warrant of arrest might be issued if she did not stop distributing?

A I probably did. I don't recall specifically.

Q Did you see any more of this girl after you left her at the telephone booth? Apparently you left, but did you see any more of her thereafter that day?

A No, I didn't leave.

Q She left, is that it?

A I don't know whether she left after talking with Mr. Horn or not, I can't remember.

Q Where is the last point you saw her that day?

A As far as I can recall, right there at that—at the telephone or right close to the telephone.

Q And you had no further discussion with her?

[10] A Not so far as I recall.

Q And you did not, so far as you recall, overhear Mr. Horn or anybody else having any discussion with her?

A I was not close enough to them to hear their conversation, no.

Q Did you see any other persons distributing literature that day other than this girl you have described?

A I saw other persons but I didn't have any contact with them myself.

Q Where were they distributing?

A I believe it was in the North Mall. I can't be certain of that.

Q And you just saw them from a distance; is that it?

A Uh-huh.

Q And to your observation were other security guards talking to them?

A I know one other was. I am not sure of any other ones, though.

Q Who was the other man or security guard you saw talking to one of them?

A Officer Ford.

Q And to your knowledge was the literature that you observed at the distance being distributed apparently the same literature as the girl you saw was distributing?

A So far as I know.

[11] Q Have you told me now about all the distribution you saw on that day of literature in the Lloyd Center?

A All that I can remember seeing.

Q Did you make any report about the events you have just described to me to anyone at Lloyd Center?

A I probably discussed it with them, yes.

Q Who in particular?

A I don't remember—I don't recall who.

Q Would it have been either Captain Boss or Mr. Horn?

A It probably was, or maybe both of them.

Q To your knowledge did you make any written report?

A No, I did not.

Q So any report would have been oral?

A Right.

Q And do you keep any personal notebook or anything of that sort?

A I do, yes.

Q And did you make any entries in it for this day that pertained to what you have described here?

A No, I didn't.

Q Was there any particular reason why you didn't?

A No particular reason except I probably didn't feel it was important enough.

Q Have you ever had occasion on other days to ask other people to stop distributing in Lloyd Center other literature?

[12] A Yes, I have.

Q And can you remember an example of what type of literature or what kind of distribution was going on on those occasions?

A Not specifically, no. There have been times when commercial literature was being distributed, being placed on automobiles, and there have been times when political literature was being passed out.

Q And on those occasions you made similar requests to that you have already described—

A Right.

Q —to cease and desist?

A Right.

Q Have there been any occasions when people didn't stop distributing when you told them to?

A Not that I recall.

Q So you have never had occasion actually to cause anybody to be arrested for distributing?

A No, that has never been done.

Q What you are saying is it has never been done because no one has ever continued distributing after being told to stop; is that right?

A Possibly.

MR. NEIL: I think I have no further questions of Sergeant Pulliam.

[13] MR. MILLER: No questions.

Officer Pulliam, under the Federal Rules of Procedure you are privileged to read and sign this deposition when Mr. Michelet has prepared a copy of it, or you can at this time waive the reading and signing if you wish. Do you have a preference as to whether you would read it and sign it or waive it?

THE WITNESS: Well, I can't see that it makes any difference, really.

MR. MILLER: Do you want to waive the reading?

THE WITNESS: Yes, let's do that.

—:— FURTHER DEPONENT SAITH NOT —:—

[Jurat Omitted in Printing]

PLAINTIFFS' EXHIBIT NO. 16

[1]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 69-127

DONALD M. TANNER, BETSY WHEELER and SUSAN ROBERTS,

Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,

Defendant.

DEPOSITION OF CHARLES R. FORD
Taken in behalf of plaintiffs

* * * *

[3]

CHARLES R. FORD

was thereupon produced as a witness in behalf of plaintiffs and, having been first duly sworn by the Notary, was examined and testified as follow:

DIRECT EXAMINATION

BY MR. NEIL:

Q Mr. Ford, as you know, I am the attorney for these plaintiffs, Mr. Tanner and two young ladies, in this case against the Lloyd Corporation. We are here today to ask you a few questions about events that occurred at the Lloyd Center on November 14, 1968, of which you may have some knowledge. If I phrase my questions to you in any way that you don't understand

or you aren't clear about, please feel free to ask me to clarify the question and I will do so.

I take it that you have been employed by the Lloyd Corporation as a security guard?

A That's right.

Q And I know you are recuperating right now, but are you still so employed?

A Well, I am on the insurance list. I have been replaced in the position, but as long as I am on insurance—

Q You were, however, on active duty—

A Right.

Q —on November 14, 1968?

A Right.

[4] Q How long had you been a security officer for the Lloyd Center?

A Covering both times, approximately five years.

Q And there was a gap in there between periods, was there?

A At which time—yes, at which time I was still employed as an extra.

Q I see. And in your job at the Lloyd Center as a security guard, I take it you always wear a uniform, do you?

A Right.

Q And carry a gun and holster?

A Yes.

Q And was your uniform similar, at least to the general public, in appearance to that of a Portland City Police officer?

A Right.

Q And did you hold a commission as a deputy Portland Police officer?

A Special police.

Q That's what I meant,—

A Right.

Q —special police officer.

A Uh-huh.

Q And that was true throughout your employment as a security guard, was it?

A Yes.

Q In fact, you hold it now?

[5] A Yes.

Q Now, coming to the events of November 14, 1968, were you advised by anyone on that date that there would be some distribution of leaflets going on at the Lloyd Center?

A Yes, we were.

Q Who told you that?

A Mr. Horn.

Q And do you recall approximately what time of the day?

A Well, approximately—I can give you reasonably close to that (consulting records).

Q You are referring now to what, your personal notebook?

A Yes.

Q And were the entries in that notebook made for November 14th on that date?

A My scratching was—notes was entered in here possibly a day and a half or two days later. I would say 11 to 11:20 at the office there; 11:20 I have approximate.

Q And what do you recall Mr. Horn telling you at that time?

A Well, we were notified that there was going to be parties distributing pamphlets in the area.

Q And were you given any instructions as to what to do about it?

A We were instructed basically our usual routine of notifying them that this was not a basic procedure of the [6] Lloyd Corporation.

Q And were you told on this occasion what to do? Well, first of all, were you told to instruct them to stop distributing in the Lloyd Center?

A Correct.

Q And were you told or given any instructions as to what to do if they continued to distribute after being told to stop?

A We were advised to advise them that this procedure was not considered a practice of our area owing to the litter, and without a special permit from them we would have to advise them to go to the street, which was basically our understanding is public property, and they could pass all they wanted to, yet at the same time notify them that the Lloyd Corporation didn't allow even their own tenants to distribute anything outside of their stores.

Q And were your standing instructions to request the names of the distributors?

A If they wouldn't cooperate we were advised to try to get their names and recommend them to contact our supervisor or Mr. Horn.

Q Also were your standing instructions if they, as you put it, refused to cooperate you should mention the possibility that a warrant could be issued for their arrest?

A In the field it was not a general practice.

Q Well,—

[7] A Nor was it advised any more that day than a regular routine.

Q All right. Now, later in the day did you actually see anyone distributing literature at the Lloyd Center?

A I did.

Q And will you tell us about when and where and what you saw?

A The first observation was a subject at the air door of Meier & Frank's right at the bridge.

Q That opens off the interior central mall; is that correct?

A Right.

Q And what did you see there?

A There was a subject there passing out pamphlets.
Q Male or female?
A Male.
Q Just one?
A As I recall, I had a notation of one or two—
Q And how long did you—
A —at the first observation there.
Q And how long did you see them distributing?
A I probably watched for a matter of three or four minutes, something like this.
Q And then what did you do?
A I walked over and started talking to the man and told him our regulation prohibited passing out literature in the [8] malls.
Q And what did he say or do?
A And he said, well, he—now, this isn't the exact word, quote,—
Q All right.
A —but similarity, that they had permission to come into the Lloyd Center to pass out this said literature.
Q Well, then what happened?
A He was going to speak to his—whoever was in charge. Now, this man was there; his location I don't know.
Q He was going to speak to some other man?
A Some other party of their group.
Q Did he leave your field of vision?
A He walked off going west. I went on around my regular routine in the mall.
Q And he didn't distribute any more to your observation?
A At that particular time he had stopped.
Q All right. And at this time with this particular gentleman did you—you said you told him that it was the policy at Lloyd Center—
A Right.

Q —not to distribute any literature in the Lloyd Center; is that right?

A Right.

Q And did you ask for his name?

[9] A This particular instance I didn't.

Q All right. Did you mention to him that a warrant for his arrest could be issued if he continued to distribute?

A I did not.

Q Did you see any other persons distribute literature at the Lloyd Center on that date?

A Yes. Possibly another ten minutes or so later—now, here again this is not absolutely correct time (consulting records)—I would say probably another ten to 15 minutes elapsed and I saw another party in the same location.

Q Again near the entrance to Meier & Frank's in the Central Mall?

A Right.

Q And again distributing the same literature?

A The same literature.

Q By the way, did you look on either occasion at this literature?

A I paid no attention to it necessarily, no.

Q Did you take a copy of it?

A That particular time I don't believe I did.

Q Well, on any occasions that day did you?

A I did have a copy of it. It was never detained or held or anything like that.

Q You got a copy that one of these persons gave to you; [10] is that right?

A There is no question that what I did.

Q All right.

A Now, this is because nearly every time a contact is made this is the usual routine.

Q And was this literature that was inviting people to some meeting that was to be held that night?

A Frankly I didn't read it.

Q You saw this second person distributing. Male or female?

A Male.

Q And what did you do then?

A I walked over and explained to him the same thing, that the literature was prohibited from being distributed in there according to our regulations, and in order to continue to do so they would have to get a permit or a clearance from our office.

Q And what did this gentleman say or do?

A As I recall they—the statement would be that they had permission and that this was a public thoroughfare, that they could do this.

Q But did he in fact stop when you ordered him to?

A He was very cooperative. He talked; there was no belligerency; we carried on a conversation in regards to it.

Q And where did he go?

A And I said that he would have to get a permit from the [11] Lloyd Center if he—

Q And where did he go?

A Now, this again is accurate time that I am quoting. We went to the Lloyd Center office.

Q And in the company of one of these gentlemen?

A In the company of this second party.

Q All right. And what occurred there?

A I took him up to the Lloyd Center office to talk to supposedly Mr. Horn, which at that time Mr. Horn didn't happen to be in.

Q And did you wait around?

A I waited there awhile and he talked to our captain, Captain Boss, who happened to be in this particular office at the time.

Q And were you present at that discussion?

A On the sideline, yes.

Q Well, did you overhear it?

A I overheard it but made no particular notes of any other than, as I say, our general routine of work.

Q Did you ask for this gentleman's name, this second gentleman?

A This I cannot recall.

Q Did Captain Boss, to your recollection?

A Accurately, no; but a general routine the answer would be yes.

[12] Q Do you know whether Captain Boss said anything to this gentleman about the possibility of arrest if he continued to distribute?

A To my knowledge at no time was ever the word "arrest" used.

Q Well, I think you would agree that you can imply it as well as state it directly, can't you?

A This is a possibility.

Q To your knowledge was it implied that one might be arrested, not necessarily by Lloyd Center people, but that they might be arrested if distribution continued?

A There is no question but what that statement would imply possibly to the answer.

Q And when you left, I take it this gentleman still was in the office with Captain Boss, or did you accompany him out?

A To my recollection I went out.

Q Did you observe any further distribution on that date at the Lloyd Center?

A Yes, on the Halsey Street, as we say, crosswalks, on the street right-of-way.

Q This would be on what you consider the public sidewalk—

A Yes.

Q —on the north side of the main part of Lloyd Center?

[13] A It would be the north side of basically Lloyd Center.

Q But the south side of Halsey Street; is that correct?

A At that particular time there was parties on both sides of the street.

Q And you saw people distributing the same literature out there; is that right?

A Right.

Q And did you have any conversation with any of them?

A At this time, as I recall, I went over and I talked to the party that I had first contacted in front of Meier & Frank's and we just conversed as a friendly gesture and that this was all permissible but down at the other part inside wasn't.

Q And did you talk with any of the other distributors other than this one gentleman?

A I talked to the—basically together at that time there was a woman there.

Q You mean with this first gentleman?

A With this first gentleman, yes. Also they had a little child with them.

Q Other than that, did you see any other distribution that day within the Lloyd Center?

A Not within the Center.

Q With respect to the two occasions of distribution within the Center that you already testified to, were those [14] persons in any way blocking the access to Meier & Frank?

A This covers a big ground.

Q Well, were they making it difficult for people to get in and out of Meier & Frank?

A I would say they were indirectly in a means obstructing traffic.

Q Well,—

A Let's put it this way: Any time anyone stands in this particular location you have got the public going around this way because there's always a stoppage.

Q Well, the entrance to Meier & Frank there at that point is probably, what would you say, ten to 12 feet in width?

A Correct.

Q And so, then, you say they were both standing in that general area?

A There was just one there.

Q At different times, though?

A Yes.

Q They were both standing in the same general area?

A Right.

Q Was it squarely in front of the entrance or was it to one side of the entrance?

A This I couldn't definitely state other than basically in front of it, which would automatically be in my mind seem reasonable centered. It could be a third, it could be [15] a half, but to pinpoint this down to an exact location this I wouldn't remember.

Q And would it be your testimony that they were obstructing pedestrian traffic to the same extent that any one person standing in that location might obstruct such traffic?

A More so.

Q More so?

A Correct.

Q Why would that be?

A As I stated, that location with any amount of pedestrian traffic, anyone distributing anything there's a certain amount of stoppage and groups of maybe two or three that have to stop, hesitate and go around here or go around there (demonstrating),—

Q I see.

A —owing to the fact that a big percentage of them will momentarily stop, open this up, look at it and walk on.

Q Was there any serious disturbance resulting from this distribution in the sense of reaction or difficulty?

A At no time was there any disturbance to my knowledge.

Q Did you make any written or oral reports to your superiors or other employees of Lloyd Center about these things you observed?

A I did not because of the simple reason that it was such a routine that a report from us to them wasn't— [16] wouldn't be required under any normal conditions.

Q You have mentioned that you have your notes that you think were made possibly a day or two after November 14th. Could you point out to me the portion of your notes that deal with that date?

A Now, here is my rough note right here (handing document to Counsel).

Q Now, you are handing me a slip of paper. You said this was made a day or two—

A This was dated as of the time—the afternoon of that day of—

Q Of November 14th?

A Of November 14th.

Q And could you translate for me what your handwritten notes there say?

A Well, here is your contact being April 30—or I mean approximately 12:30 would have been the time that I contacted this subject in front of Meier & Frank's.

Q The first one?

A Yes.

Q All right.

A Which, as I have entered it here, this is our report time to the office at 12:20; 12:20 is what this is.

Q Let me ask you this: Have you used this little sheet to make a fuller translation into your notebook— [17]

A Correct.

Q —of what your—

A Yes.

Q Could I see the notebook for just a moment?

A Yes (handing notebook to Counsel who examines same.)

Q And where does it end?

A The end of this would be right down here (indicating).

Q And the things below that have nothing to do with this?

A Nothing to do with that.

Q Let me read this for the record and you correct me if I am reading it wrong.

A All right.

Q You have got 9/14/68 but I think you mean November 14, '68?

A Yes, correct.

Q The first entry is April—or, pardon me, "Approximately 11:20 a.m. report to office re briefing—"

A "—of passing literature."

Q "—of passing literature."

The next entry, "12:20 contacted subject"—and what is this in paren?

A This is "Poncho, beard and barefoot."

Q Oh, poncho, beard and barefoot.

A "Air door Meier & Frank's." That is the location.

Q "Advised subject of no passing of literature in—"

[18] A Center.

Q The next entry is 12:35, "Second subject Meier & Frank." What is this word?

A That is "Suit." In other words, he was wearing a suit.

Q "Escorted same to office. Captain Boss talked to same." What is this word?

A "Appointment with Horn 1:30." There was an appointment made with Horn—or with the office to meet Horn there at 1:30.

Q For this subject to?

A For this subject, right.

Q The next entry, "1:15 contacted subject," and what is this entry?

A This is "Crosswalk."

Q I see.

A "Crosswalk near phone booth." That is right there on Halsey, we call that the crosswalk.

Q Would this be outside the Lloyd Center?

A This is—the phone booths are on the inside in the Lloyd Center.

Q Now, this is the same subject who had made the appointment; is that right?

A Right.

Q And the note says he would not have to wait until 1:30 as Mr. Horn was coming across the mall; they talked; [19] resumed patrol. So that indicates that this subject had a conversation with Mr. Horn?

A Correct.

Q And were you present at that conversation?

A Within a matter of, oh, say five or six feet.

Q Did you overhear any of it?

A Partially, yes; all of it, no.

Q And what do you recall hearing Mr. Horn tell this gentleman?

A Now, it was re-advising them the policy of the Lloyds Corporation of prohibiting distributing of literature inside the mall and the possibility of them trespassing on private property.

Q Anything said about arrest that time?

A At no time in my hearing was there ever the word "arrest" used.

Q All right. Was this gentleman having a conversation with Mr. Horn, was that the gentleman in the poncho, beard and barefoot?

A The man with the suit?

Q The man with the suit?

A Yes.

Q The second man you had seen distributing?

A Correct.

Q And he was also the gentleman for whom an appointment [20] had been made to see Mr. Horn originally?

A Correct.

Q When did you first become a security guard at the Lloyd Center?

A Oh, I would have to go back to get the exact date, but I think it was possibly the latter part of '62.

Q Over the years you have worked there have you ever observed any non-commercial activities going on in the malls and walkways with the permission of the Lloyd Center?

A The only ones that I can recall that permission has been—commercial? No.

Q I was talking about non-commercial.

A The Veterans' poppy sales as I recall is all; and at Christmas-time they have the Salvation Army.

Q The bell ringers soliciting funds?

A Yes.

Q Also the Volunteers of America doing that in some years?

A Oh, various organizations doing that during that particular time.

Q Have you seen Boy Scout displays in the malls or walkways?

A We have basically a once-a-year display of Boy Scouts.

Q And that occurs on the central walkway or malls?

A This is basically through the malls.

Q There are several displays that are at different points?

[21] A This is a special program, to my knowledge, that—the same as they have right now, anniversary week.

Q Has there ever been a football rally held in the Center in the main mall?

A I tell you if there has been I have never been a witness to it.

Q During the presidential campaigns have you ever observed any presidential candidates holding rallies or meetings in the center mall?

A This again I would say I have not.

Q From time to time I seem to recall I personally have seen some strolling musicians in the center mall of the Lloyd Center and I don't really know in what connection. Have you ever seen that?

A I have.

Q And in what capacity were those people there?

A I would say through the—what would you call it—public relations or advertising or whatever it might be from Lloyd's Corporation.

Q This would be a program that the Lloyd Center itself had sponsored?

A Correct.

Q Was it something like a birthday celebration of the Center, something like that?

A Annuals, yes.

[22] Q What kind of other events would go on in the central mall in addition to the strolling musicians in that line or connection?

A They had a—in the ice rink they have the crowning of the queen.

Q Of what?

A Of—I knew you were going to ask me that and I don't know just exactly—and I have witnessed two of them—just exactly what these are.

Q Is this a Lloyd Center—

A This is Lloyd Center sponsored.

Q And at Christmas time you have had school choirs in and that kind of thing in to sing in the central mall, haven't you?

A Under the sponsoring of the Lloyd's Corporation.

Q There is a public auditorium—well, I won't call it public, but there is an auditorium located in the lower level of the main part of the Lloyd Center; isn't that right?

A Correct.

Q And that is let out to various groups and organizations on a rental basis, is it?

A Right, to my knowledge.

Q Are there also some that use it on a no-charge basis?

A As far as I know it is all that way.

Q It is all on what?

[23] A A no-charge.

Q I see. And meetings there are held in the evenings on occasions, aren't they?

A Occasionally.

Q And all kinds of groups have met there, isn't that right, from political parties to all sorts of profit or non-profit groups, I take it?

A Correct.

Q And also for meetings that have been held during the daytime?

A Right.

Q Is access available during 24 hours a day to the malls and walkways of the Lloyd Center?

A To pass through, yes; loitering, no.

Q People can go through if they want to?

A Correct.

Q If they stuck around any undue length of time you would begin to wonder what they were doing there after business hours; is that it?

A That's right.

Q But the parking areas, I take it, are blocked off after some certain hour?

A Right.

Q Like what, 9:00 p.m. or something?

A No. The complete lockup would be possibly—other than [24] some special doings—would be basically midnight, 11:30 to 12:30.

Q That is when the parking lot is closed, too?

A When everything is closed up tight, right. I mean everything.

Q Everything?

A Right.

Q But if I were to stroll through the central mall and the malls going to the sidewalks and streets at 2:00 a.m., I could do it, I take it?

A There would be nothing in the world—you wouldn't even be contacted. There is no question but what you would be observed.

MR. NEIL: I don't think I have any further questions.

CROSS EXAMINATION

BY MR. MILLER:

Q Mr. Ford, did one of these people distributing literature say something to you about going to eat while—

A Yes.

Q What was said in that connection?

A This party with the poncho, the beard and hat and barefoot and the woman with the little child asked me where a good place would be to eat, because it was a cold day, if any of us recall, and I advised them to go on down to the Manning cafeteria because they could go in there and get their [25] eats and go into the back and it was warm, it was out of the way, not a very big crowd other than just at the rush hour, which they did. In fact, adding to your question, I met them after they had been there and they basically thanked me for having them go down, it was so good. It turned out the young-

ster could sit there and not be molested or bother anybody.

MR. MILLER: I don't have any more questions.

MR. NEIL: I have nothing further.

MR. MILLER: Mr. Ford, this deposition will be typed out, the questions and answers will be typed out, and after that is done, the Federal Rules of Procedure provide that you may have the privilege of reading it and signing it if you want to. If you don't think that would be necessary you can waive the reading and signing if you wish to. Whether you would read it and sign it or waive the reading is entirely up to you. Do you have any preference in that respect?

THE WITNESS: Well, I believe my answer is yes. I am a little bit against putting my name on any blank, period. Does this answer it? I am not against singing it, no.

MR. MILLER: Do I take it, then, you want to read and sign it?

THE WITNESS: Preferably, yes.

[26] MR. MILLER: Fine.

—:— FURTHER DEPONENT SAITH NOT —:—

/s/ Charles R. Ford
CHARLES R. FORD

[Jurat Omitted in Printing]

PLAINTIFFS' EXHIBIT NO. 17

August 24, 1960

Mr. Ed Thomas
Porter Advertising Agency
515 Builders Exchange Bldg.
Portland 4, Oregon

Dear Mr. Thomas:

Thank you for your August 16 letter regarding the Salvation Army Christmas kettles.

We have greatly restricted the use of the malls as to sales and solicitations but we recognize the great work the Salvation Army is doing. It is therefore agreeable that the Salvation Army Volunteers and Christmas kettles be in Lloyd Center during the Christmas season.

We have discussed this with the Directors of the Merchants Association who feel the same as we do. They do request that the kettles be placed in strategic places in the malls but far enough from the store doors so as not to impede shopping traffic.

I am sure there will be no problem regarding this, so when the time comes would whoever is in charge please contact Mr. Sundt or Mr. McKinney of this office with regard to specific locations.

Sincerely,

RICHARD C. HORN
Manager

RCH:es

PLAINTIFFS' EXHIBIT NO. 18

November 21, 1967

The Salvation Army
20 S. W. Sixth Avenue
Portland, Oregon 97204

Gentlemen:

As in previous years, we assume you will wish to have Army Kettles in Lloyd Center during Christmas month. Because Volunteers of America will also be here and because it is necessary to limit the number of Kettles, we request that each organization have three only.
Thank you.

Sincerely,

RICHARD C. HORN
Manager

RCH:bh

P.S. No bands are permitted in the Center except those sponsored by the Merchants Association.

PLAINTIFFS' EXHIBIT NO. 19

August 29, 1960

Mr. Clay A. Sloat
5814 N. E. 16th Avenue
Portland 11, Oregon

Dear Mr. Sloat:

Your letter to the Lloyd Center Merchants Association regarding sale of the War Cry magazine was discussed by the Board of Directors of the Association.

The Board is not unmindful of the work the Salvation Army is doing and, as a matter of fact, had made arrangements with the Army for the placement of their Christmas kettles. However, use of the malls for sales and solicitations are being greatly restricted. In some instances a worthwhile effort will be refused only because it might set a precedent as far as allowing unworthwhile, or at least marginal fields, and solicitations.

Because of this the Association wishes to proceed cautiously.

Therefore, while the Association has presently denied your request to sell War Cry it does not mean that it is a permanent denial, and can later be reconsidered.

Thanking you for your letter, I am

Sincerely,

SAM MCKINNEY

SM:es

PLAINTIFFS' EXHIBIT NO. 20

September 15, 1964

Mr. Lloyd Tupling
326 New U. S. Court House
Portland, Oregon

Dear Mr. Tupling:

On August 27th I sent a letter to Martha Ann Adelsheim offering the facilities of Lloyd Center as a forum site for President Johnson and Senator Humphrey if and when they visit Oregon this election year for a political speech.

I believe this invitation will be of interest to you since an appearance at Lloyd Center offers the following advantages to the candidate visiting Portland:

1. Easy accessibility from Portland International Airport.

2. A dramatic setting for an address. Our spiral staircase is a natural stage with standing area for thousands in the Plaza and along the malls.

   We will decorate the stage area and provide a quality hi-fidelity sound system with complete center-wide coverage. Candidate has easy entrance and exit without going through crowd, if desired.

3. A built-in audience in a concentrated area. Thousands of people would be able to see and hear the Democratic candidate.

4. Lloyd Center has available video telephone cables for nationwide telecasts. As you probably know, ABC-TV televised the Oregon Primary returns live from the Center.

5. Security force trained in crowd control. In 1962 our police department handled a crowd of 20,000 at the Ella Fitzgerald concerts.
6. A conference room for staff traveling with the candidate.
7. Auditorium for News Conference, completely set up as required by the candidate's News Director.
8. Reserved parking area for news media.
9. Free parking for 8,000 cars within a few minutes walk from where candidate is to speak.
10. Booth in a central location for distribution of campaign material.
11. Extensive advertising and publicity would be provided by Lloyd Center.

I believe that our convenient location and setting would provide the largest audience President Johnson and Senator Humphrey could attract in Oregon.

We offer the Democratic candidates complete cooperation and use of our facilities in order to make their appearance in Portland as effective as possible.

I hope you feel this proposal has merit. If so, then I would like to get together with you to go into more specific details.

Respectfully,

RONALD G. SCHMIDT
Director of Public Relations

RGS:bh

PLAINTIFFS' EXHIBIT NO. 21

January 2, 1964

Mr. Phillip Roth, Chairman
Republican State Central Committee
506 Executive Building
Portland, Oregon

Dear Phil:

I would like to offer you the facilities of Lloyd Center as a forum site for candidates visiting Portland in the campaign for the Republican presidential nomination.

Lloyd Center offers these advantages to a presidential candidate visiting Portland:

1. Easily accessible from Portland International Airport via the Banfield Freeway.
2. A dramatic setting for an address. Two locations are available to the candidates for a speech at Lloyd Center. Either the Bridge over the Ice Rink, or the West Mall parking deck. We will construct a stage specifically for the candidates, with decorative bunting and a quality hi-fidelity sound system with center-wide coverage.
3. A built-in audience in a concentrated area. Thousands of people would be able to see and hear a candidate from either of the above locations.
4. The Center is equipped with video telephone cables for nationwide telecasts.
5. A conference room for staff traveling with the presidential candidate.
6. A security force trained in crowd control.
7. Auditorium for News Conference, completely set up

and coordinated by a member of Lloyd Center's Public Relations staff, if desired.

8. Reserved parking area for news media.
9. Free parking for 8,000 cars; 3,500 under cover.
10. Special booth located in Central Plaza for campaign material and posters.
11. Location is centralized, only minutes from Portland International Airport and downtown Portland.

I will assist the candidates' press relations men in order to make the individual candidates' visit to Lloyd Center as beneficial as possible.

Lloyd Center is offering this service to the candidates for presidential nomination in both parties as part of its continuing community relations endeavor.

Sincerely,

RONALD G. SCHMIDT
Director of Public Relations

RGS:bh

PLAINTIFFS' EXHIBIT NO. 22

September 24, 1964

Mr. Harry E. Williams
1837 S. E. 41st Avenue
Portland, Oregon 97214

Dear Mr. Williams:

In the event there is no Veteran's Day parade, we would like to have your group consider the following proposal for a Veteran's Day program at Lloyd Center. As you will see from the program we have outlined, it will require the cooperation of your Veteran's organizations to provide a specific number of people in order for this event to be successful from your standpoint, as well as ours.

We suggest that the "Salute to Veterans" be a 15-minute program with strong community appeal. At 10:45 a.m. on November 11, the program would begin with Color Guard and drummers marching from three (3) locations in the Center to the Central Plaza. This would require three separate Color Guard units and drummers.

The program itself would take place in Lloyd Center's Central Plaza with the spiral staircase serving as a stage. When the Color Guard reaches the Plaza, the colors would assemble and the Leatherneck Band would play the National Anthem. Immediately after the song, our speaker, John Salisbury, would deliver a brief talk on the meaning of Veteran's Day. At the conclusion of his talk—precisely at 11 o'clock—the colors would be lowered while taps are played.

We would like to have as many American Legion Post flags as possible assembled in the Plaza in a large horse-

shoe design. Lloyd Center would place American flags on the bridge over the ice rink throughout the day.

I believe you will find that a Veteran's Day program of this type will afford more extensive press and television coverage than would be received from the annual parade. This is only important because our citizens must not forget those who have died for our country, or who are living and contributed so much.

I am available to meet with your organization at any time, at your convenience, to explore the possibility of a program of this type.

Please let me know if you have any questions regarding the above proposal. We are ready to begin making final arrangements once your group has given its approval.

Sincerely,

RONALD G. SCHMIDT
Director of Public Relations

RGS:bh

PLAINTIFFS' EXHIBIT NO. 23

August 15, 1962

Mr. Ted Mesang, Director
Oregon State University Marching Band
Corvallis, Oregon

Dear Mr. Mesang:

Lloyd Center would like to invite the Oregon State University Marching Band to appear in Portland on Saturday, October 13, at 11:00 a.m., for a big pre-game rally in our central plaza.

We would like to make this the biggest football rally OSU has ever held in Portland. And, with the cooperation of your department, as well as the Pep and Rally Squads, I am sure we can.

I would appreciate it if you would let me know if October 13, before the OSU—University of Washington game, is available for you. If not, please let me know what date would be most convenient and we will proceed with plans for the biggest pre-game OSU rally Portland has ever seen.

Sincerely,

RONALD G. SCHMIDT
Director of Public Relations

RGS:bh

PLAINTIFFS' EXHIBIT NO. 24

RESOLUTION NO. 28669

WHEREAS by Ordinance No. 101288, passed by the Council November 10, 1954, as amended by Ordinance No. 107641, passed by the Council March 20, 1958, the Lloyd Corporation Ltd., was required to have constructed buildings having a minimum area of 850,000 square feet with off-street parking, and that Lloyd Corporation, Ltd., should have dedicated by December 11, 1961, certain area for public streets in lieu of streets vacated within the Lloyd Center area; and

WHEREAS Lloyd Corporation Ltd. has fully complied with the requirements of Ordinance No. 101288 and 107641 and has fully completed the terms and provisions to be performed by it; now, therefore be it

RESOLVED that completion of the terms of Ordinance No. 101288, as amended by Ordinance No. 107641, passed by the Council March 20, 1958, by the Lloyd Corporation Ltd., is hereby acknowledged, and Lloyd Corporation Ltd., is hereby relieved of any further obligations or conditions assumed by the provisions of said ordinances.

Adopted by the Council December 6, 1961.

/s/ Ray Smith
Auditor of the
City of Portland

Commissioner Bowes
11-30-61 R.S.I.
RLH:gm

AGB

Plaintiffs' Exhibit No. 24

194.

ORDINANCE NO. 107641

An Ordinance to extend for two years the time of completion as provided in Section 4 (a) of Ordinance No. 101288, relating to street vacations and dedications in the Lloyd project, so as to allow sufficient time for completion of work now under way, or for which bids have been received, or projects which are to be constructed in completing the project, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that Ordinance No. 101288 was passed by the Council November 10th, 1954, and is and was the "master" ordinance for street vacation and dedication in connection with the Lloyd project which was then being formulated, and that subsequent thereto there have been other ordinances which have modified to some degree the "master" ordinance in detail of vacation and of dedication and other ordinances have extended vacation and dedication areas, these ordinances being Nos. 105270, 105271, 106007, 106008, 106009 and 106640, and the Council further finds that in consideration of the vacations authorized by the "master" ordinance and the other ordinances above-mentioned, the Lloyd Corporation, Ltd. has deeded to the City of Portland certain properties in accordance with the requirements for dedication and has delivered to the City a title insurance policy with reference thereto, and the Council further finds that active construction is presently under way in the area in that utility services are being realigned in accordance with the overall plan, that the City has on deposit the sum of approximately $46,000 for the relocation of water lines and that bids have been received by the Lloyd Corporation, Ltd. for construction of a multi-million dollar shopping facility; that the bids as received are presently under review and that the Bureau of Buildings of the

City is engaged in a major project of checking the detailed plans and blue prints which have been filed in connection with the issuance of City permits for such construction and the Council further finds that because of the magnitude of the project the possibility exists that all phases can not be completed within 5 years from the effective date of Ordinance No. 101288, namely, December 11, 1959, and that in order that the Lloyd Corporation, Ltd. and the bidders may have full assurance that the provisions of the ordinances above-mentioned will remain in full force and effect until the completion of the project and at the same time a definite date should be fixed after which should the Lloyd Corporation, Ltd. not complete its project, street areas may revert to the City as provided by the above-mentioned ordinances, and the Council further finds that a two-year extension is reasonable under the circumstances; now, therefore, the time limit prescribed in Section 4 (a) of Ordinance No. 101288, namely, five (5) years from the effective date of this ordinance, namely, December 11, 1959, hereby is extended for a period of two (2) years to and including December 11, 1961.

Section 2. This ordinance shall be of no force and effect until and unless it shall have been accepted by the Lloyd Corporation, Ltd., who have petitioned for this extension of time under date of March 12, 1958. The said acceptance shall be by the Lloyd Corporation, Ltd. on behalf of itself, its successors and assigns, and shall be in writing and filed with the Auditor of the city of Portland, having first been approved by the City Attorney as to form. The Auditor shall, at the expense of the petitioner, the Lloyd Corporation, Ltd., file for record a certified copy of this ordinance after its acceptance, with the County Clerk, as ex-officio recorder for Multnomah County.

Section 3. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the city of Portland in this: Inasmuch as bids have been called for and received for the multimillion dollar project in the Lloyd tract and the awarding of contracts is presently being held up pending extension of time as by this ordinance provided, and thus delaying the opportunity for much needed employment in the city of Portland; therefore, an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council March 20, 1958.

/s/ Terry D. Schrunk
Mayor of the
City of Portland

Attest:

/s/ Will Gibson
Auditor of the
City of Portland

Com. Bowes
AGB:dh
3/18/58

ORDINANCE NO. 101288

An Ordinance vacating, subject to conditions, all that portion of N.E. 11th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; all that portion of N.E. Clackamas Street lying between the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue, excepting area in intersection; all that portion of N.E. Wasco Street lying between the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue, excepting certain area in intersections; all that portion of N.E. 10th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; all that portion of N.E. 12th Avenue lying between the north line of N.E. Wasco Street and the south line of N.E. Halsey Street; all that portion of N.E. 12th Avenue lying between the north line of N.E. Halsey Street and the south line of N.E. Broadway, excepting portions in intersection; all that portion of N.E. 13th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; and all that portion of N.E. 14th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street, all in the City of Portland, Oregon.

WHEREAS it appears to the Council that on the 6th day of August, 1954, Lloyd Corporation, Ltd., by Richard R. Von Hagen, its president, and David W. Yule, its assistant secretary, filed petitions with the City Auditor for the vacation of all that portion of N.E. 11th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; all that portion of N.E. Clackamus Street lying between the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue,

excepting areas in intersections, all that portion of N.E. Wasco Street lying betwen the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue, excepting certain areas in intersections; all that portion of N.E. 10th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; all that portion of N.E. 12th Avenue lying between the north line of N.E. Wasco Street and the south line of N.E. Halsey Street; all that portion of N.E. 12th Avenue lying between the north line of N.E. Halsey Street and the south line of N.E. Broadway, excepting portions in intersection; all that portion of N.E. 13th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; and all that portion of N.E. 14th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street, all in the City of Portland, Multnomah County, Oregon, pursuant to the provisions of ORS 271-.080 to and including 271.170 and that at the time of said filing paid the required fees and also filed with the Auditor a consent in writing of all abutting property owners upon the portions of said streets proposed to be vacated and more than two-thirds in area of all the real property affected by such vacations and that thereupon the City Auditor gave notice by posting and publication for a period of four (4) successive weeks that said petitions together with any objections, remonstrances or claims for damages which may be made in writing and filed with the Auditor of the City of Portland, Oregon prior to the time of hearing would be heard and considered by the Council of the City of Portland, Oregon, at a regular meeting beginning at 9:30 a.m., Wednesday, September 15, 1954, in the Council Chambers of the City Hall in said City; said notices were first published in the City's official newspaper, to wit: Daily Journal of Commerce on August 13, 1954 and the last publication in the issue of September 3, 1954, and said Auditor within five (5) days

after said first publication further published said matter by posting three (3) notices headed "Notice of Street Vacation" in three (3) conspicuous places in each of the areas for each of said streets proposed to be vacated in the places herein described and designated as follows:

For N.E. 11th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street

Location	Object to which attached
At the approximate intersection of the east line of N.E. 11th Avenue and the south line of N.E. Halsey Street.	On a pole
On the approximate east line of N.E. 11th Avenue approximately equidistant between the south line of N.E. Clackamas Street and the north line of N.E. Wasco Street.	On a pole
At the approximate intersection of the west line of N.E. 11th Avenue and the north line of N.E. Multnomah Street.	On a pole

For N.E. Clackamas Street lying between the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue excepting areas in intersections:

Location	Object to which attached
At the approximate intersection of the south line of N.E. Clackamas Street and the east line of N.E. 9th Avenue	On a stake
At the approximate intersection of the north line of N.E. Clackamas Street and the east line of N.E. 12th Avenue	On a pole
At the approximate intersection of the north line of N.E. Clackamas Street and the west line of N.E. 15th Avenue	On a pole

For N.E. Wasco Street lying between the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue excepting areas in intersections:

Location	Object to which attached
At the approximate intersection of the south line of N.E. Wasco Street and the east line of N.E. 9th Avenue	On a pole

At the approximate intersection of the north line of N.E. Wasco Street and the east line of N.E. 12th Avenue	On a stake
At the approximate intersection of the south line of N.E. Wasco Street and the west line of N.E. 15th Avenue	On a pole

For N.E. 10th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street

Location	Object to which attached
At the approximate intersection of the north line of N.E. Multnomah Street and the west line of N.E. 10th Avenue	On a tree
On the approximate east line of N.E. 10th Avenue approximately equidistant between the north line of N.E. Wasco Street and the south line of N.E. Clackamas Street	On a pole
At the approximate intersection of the west line of N.E. 10th Avenue and the south line of N.E. Halsey Street	On a pole

For N.E. 12th Avenue lying between the north line of N.E. Wasco Street and the south line of N.E. Halsey Street

Location	Object to which attached
At the approximate intersection of the south line of N.E. Wasco Street and the east line of N.E. 12th Avenue	On a pole
At the approximate intersection of the west line of N.E. 12th Avenue and the south line of N.E. Clackamas Street.	On a pole
At the approximate intersection of the west line of N.E. 12th Avenue and the south line of N.E. Halsey Street	On a pole

For N.E. 12th Avenue lying between the north line of N.E. Halsey Street and the south line of N.E. Broadway, excepting area in intersections.

Location	Object to which attached
At the approximate intersection of the west line of N.E. 12th Avenue and the north line of N.E. Halsey Street	On a pole

Location	Object to which attached
At the approximate intersection of the west line of N.E. 12th Avenue and the south line of N.E. Weidler Street	On a pole
At the approximate intersection of the east line of N.E. 12th Avenue and the south line of N.E. Broadway	On a pole

For N.E. 13th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street.

Location	Object to which attached
At the approximate intersection of the east line of N.E. 13th Avenue and the south line of N.E. Halsey Street	On a pole
On the approximate east line of N.E. 13th Avenue approximately equidistant between the south line of N.E. Clackamas Street and the north line of N.E. Wasco Street	On a stake
At the approximate intersection of the west line of N.E. 13th Avenue and the north line of N.E. Multnomah Street	On a pole

For N.E. 14th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street.

Location	Object to which attached
At the approximate intersection of the east line of N.E. 14th Avenue and the north line of N.E. Multnomah Street	On a pole
On the approximate west line of N.E. 14th Avenue approximately equidistant between the north line of N.E. Wasco Street and the south line of N.E. Clackamas Street	On a pole
At the approximate intersection of the west line of N.E. 14th Avenue and the south line of N.E. Halsey Street	On a pole

WHEREAS said matter came on regularly for hearing on September 15, 1954, and no one appeared to object thereto and no objections or remonstrances nor any claim for damage were filed or made against the same, and

WHEREAS the Council finds that the petitions for said street vacations have been investigated by the City Engineer who recommends that the vacations be granted and subject to certain conditions, set forth in his report, and

WHEREAS the Council finds that the reason for these vacations is for general building purposes to be used in the development of a general retail business district and the development of an adequate parking area to support said district; that the Council further finds that in order to develop a large retail unit such as contemplated by Lloyd Corporation, Ltd., it is necessary to vacate the streets above mentioned, and

WHEREAS the Council finds that the vacation of the street area herein described will not injuriously affect the market value of the property abutting or affected by such vacations and it appears that said vacations will be in all respects for the public welfare, and it further appears that all things have been done as provided by law for the vacation of said street area and that final action should be now taken thereon and such vacations be made a matter of record, and

WHEREAS the Council finds that such vacations will be of material financial benefit to Lloyd Corporation, Ltd.; that it is contemplated in the future that additional street area will have to be opened in order to adequately take care of traffic congestion and ingress and egress to the Banfield Expressway when constructed; that said Lloyd Corporation, Ltd. has agreed to make future dedication of street area upon certain terms and conditions; now, therefore,

The City of Portland does ordain as follows:

Section 1. It is hereby ascertained and determined that said vacations will not injuriously affect the market value of any of the property abutting upon said street areas to

be vacated but will be beneficial thereto; that the consent of the owners of all the property adjacent or abutting the areas to be vacated has been obtained in writing duly acknowledged and filed as herein above stated; that notice has been duly and regularly had and the Council does now find that no objections or remonstrances were made or filed and that the public interest will not be prejudiced thereby but that said vacations will enhance the public interest and welfare; that the petitions for vacations should be granted with conditions as outlined in the City Engineer's report and as hereinafter set forth, all of which determinations hereby are made a matter of record.

Section 2. There hereby is vacated the following described property in the City of Portland, County of Multnomah, State of Oregon, to wit:

A. N.E. 11th Avenue lying between the present north line of N.E. Multnomah Street and a line 10.0 feet south of and parallel to the present south line of N.E. Halsey Street, when measured at right angles thereto

B. N.E. Clackamas Street lying between a line 20.0 feet east of and parallel to the present east line of N.E. 9th Avenue, when measured at right angles thereto, and the present west line of N.E. 10th Avenue

N.E. Clackamas Street lying between the present east line of N.E. 10th Avenue and the present west line of N.E. 11th Avenue;

N.E. Clackamas Street lying between the present east line of N.E. 11th Avenue and the present west line of N.E. 12th Avenue;

N.E. Clackamas Street lying between the present east line of N.E. 12th Avenue and the present west line of N.E. 13th Avenue;

N.E. Clackamas Street lying between the present east line of N.E. 13th Avenue and the present west line of N.E. 14th Avenue;

N.E. Clackamas Street lying between the present east line of N.E. 11th Avenue and the present west line of and parallel to the present west line of N.E. 15th Avenue, when measured at right angles thereto;

C. N.E. Wasco Street lying between a line 20.0 feet east of and parallel to the present east line of N.E. 9th Avenue, when measured at right angles thereto, and the present west line of N.E. 10th Avenue;

N.E. Wasco Street lying between the present east line of N.E. 10th Avenue and the present west line of N.E. 11th Avenue;

N.E. Wasco Street lying between the present east line of N.E. 11th Avenue and the present west line of N.E. 13th Avenue;

N.E. Wasco Street lying between the present east line of N.E. 13th Avenue and the present west line of N.E. 14th Avenue;

N.E. Wasco Street lying between the present east line of N.E. 14th Avenue and a line 10.0 feet west of and parallel to the present west line of N.E. 15th Avenue, when measured at right angles thereto.

D. N.E. 10th Avenue lying between the present north line of N.E. Multnomah Street and a line 10.0 feet southerly of and parallel to the present south line of N.E. Halsey Street, when measured at right angles thereto.

E. N.E. 12th Avenue lying between the present north line of N.E. Wasco Street and a line 10.0 feet south of and parallel to the present south line of N.E. Halsey Street, when measured at right angles thereto.

F. Northeast 12th Avenue lying between a line 10.0 feet northerly of and parallel to the present north line of Northeast Halsey Street, when measured at right angles thereto, and the present south line of N.E. Weidler Street; and

Northeast 12th Avenue lying between the present north line of Northeast Weidler Street and the present south line of Northeast Broadway Street.

G. N.E. 13th Avenue lying between the present north line of N.E. Multnomah Street and a line 10.0 feet south of and parallel to the present south line of N.E. Halsey Street, when measured at right angles thereto.

H. N.E. 14th Avenue lying between the present north line of N.E. Multnomah Street and a line 10.0 feet south of and parallel to the present south line of N.E. Halsey Street, when measured at right angles thereto.

Section 3. These vacations are contingent and dependent upon the following condition:

That nothing herein contained shall cause or require the removal of or abandonment of any sewer, water main, gas main, conduit of any kind, wire, pole, or thing used or intended to be used for any public service, and the right hereby is reserved for the owner of any such utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild and/or enlarge any and all such things; that no building or structure of any kind shall be built or erected within a distance of ten feet from the center line of any such utility, except by written consent of the City Engineer and the owner of such utility first had; and that any and all contemplated building plans in said vacated area shall be submitted for approval to the City Engineer and to the Director, Bureau of Building In-

spections, to the end that such construction may be so adjusted with reference to all public utilities in said area as to cause a minimum amount of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereafter reconstructed, renewed, replaced and/or enlarged, unless the petitioner shall agree with the utility owner involved to remove said utilities to a new location which removal shall be at the expense of the petitioner and subject to the prior approval of the City Engineer as to location and manner of removal and installation.

Section 4. These vacations are made upon the following agreements, which the petitioner Lloyd Corporation, Ltd. on behalf of itself, its successors and assigns agrees to keep and perform:

(a) In the event buildings providing a minimum of 850,000 square feet and off-street parking areas are not constructed by the petitioner or its successors and assigns in the area bounded on the south by N.E. Multnomah Street, on the east by N.E. 15th Avenue, on the north by N.E. Halsey Street and on the west by N.E. 9th Avenue, and in the area bounded on the south by N.E. Halsey Street, on the east by N.E. 13th Avenue, on the north by N.E. Broadway and on the west by N.E. 11th Avenue within five (5) years from the effective date of this ordinance, substantially in accordance with preliminary plans and drawings prepared by John Graham & Co., architects and engineers, designated Lloyd Center (with possible variations to meet needs of individual tenants for said buildings or as found desirable by the architects of Lloyd Corporation, Ltd.), then and in that event Lloyd Corporation, Ltd., its successors or assigns, shall dedicate for street purposes all of the street areas received by it resulting from the passage of this ordinance.

(b) Lloyd Corporation, Ltd., its successors or assigns, shall within fifteen (15) days after the beginning of the construction of the first building in the areas above described dedicate for street purposes the following areas to wit:

The following portions of Holladay's Addition to East Portland a duly recorded plat in the County of Multnomah and State of Oregon:

Lot	Area Sq. Ft.
S 10′ Lot 5, Blk 71	1000
N 10′ Lot 8, Blk 73	1000
S 10′ Lots 4&5, Blk 94	2000
S 10′ Lot 4, Blk 99	1000
W 10′ Lots 3&4, Blk 93	1000
E 10′ Lots 5, 6, 7&8, Blk 81	2000
E 10′ Lots 5, 6, 7&8, Blk 82	2000
W 20′ Lots 1, 2, 3&4, Blk 116	4000
W 20′ Lots 1, 2, 3&4, Blk 115	4000
W 20′ Lots 1, 2, 3&4, Blk 114	4000
N 10′ of Lot 8, Blk 113	1000
S 10′ of E 80′ Lot 4, Blk 114	800
W 20′ Lots 3&4, Blk 113	2000
N 10′ of E 80′ Lot 1, Blk 116	800
N 10′ Lot 8, Blk 116	1000
N 10′ Lot 1, Blk 117	1000
N 10′ W 90′ Lot 8, Blk 117	900
S 10′ W 90′ Lot 5, Blk 204	900
S 10′ E 90′ Lot 4, Blk 203	900
N 10′ E 90′ Lot 1, Blk 136	900
S 10′ Lot 5, Blk 203	1000
N 10′ Lot 8, Blk 136	1000
N 10′ Lot 1, Blk 137	1000

Lot	Area Sq. Ft.
N 10′ W 90′ Lot 8, Blk 137	900
S 10′ Lot 4, Blk 202	1000
S 10′ W 90′ Lot 5, Blk 202	900
S 10′ E 90′ Lot 4, Blk 201	900
S 10′ Lot 5, Blk 201	1000
N 10′ E 90′ Lot 1, Blk 156	900
N 10′ Lot 8, Blk 156	1000
S 10′ Lots 4&5, Blk 200	2000
N 10′ Lots 1&8, Blk 157	2000
E 10′ S 40′ Lot 8, Blk 157	400
E 10′ Lots 5, 6&7, Blk 157	1500
E 10′ Lots 5, 6, 7&8, Blk 158	2000
E 10′ Lots 6, 7&8, Blk 159	1500
E 10′ N 40′ Lot 5, Blk 159	400
S 10′ Lot 4, Blk 174	1000
W 10′ N 40′ Lot 4, Blk 174	400
W 10′ Lots 1, 2&3, Blk 174	1500
W 10′ N 34′ Lot 3, Blk 175	340
W 10′ S 16′ Lot 2, Blk 175	160
W 10′ Lots 1, 2, 3&4, Blk 176	2000
N 10′ E 90′ Lot 1, Blk 176	900

Lot	Area Sq. Ft.
E 10' N 40' Lot 5, Blk 200	400
E 10' Lot 6, Blk 200	500
W 10' S 36.41' Lot 4, Blk 199	364.1
W 10' N 32' Lot 3, Blk 199	320
W 10' Lot 2, Blk 228	500
W 10' S 40' Lot 1, Blk 228	400
S 10' E 90' Lot 4, Blk 199	900
S 10' W 90' Lot 5, Blk 199	900
E 10' Lots 5&6, Blk 199	1000
E 10' Lots 5&6, Blk 176	1000
E 10' Lots 5, 6, 7&8, Blk 175	2000
E 10' Lots 6&7, Blk 174	1000
E 10' N 40' Lot 5, Blk 174	400
W 10' N 40' Lot 4, Blk 179	400
W 10' Lots 1, 2&3, Blk 179	1500
W 10' Lots 2, 3&4, Blk 178	1500
W 30' Lots 2, 3&4, Blk 177	1500
W 10' Lots 3&4, Blk 198	1000
W 10' S 32' Lot 2, Blk 198	320
W 10' Lot 3, Blk 229	500
Total	74,304.1

(c) In the event buildings providing a minimum of 850,000 square feet and off-street parking areas are constructed by Lloyd Corporation, Ltd., its successors and assigns in the areas described in Section 4 (a) hereof, then Lloyd Corporation, Ltd., its successors or assigns, shall within five (5) years from the effective date of this ordinance dedicate for street purposes area of land now or hereafter owned by it in the vicinity of the streets herein vacated as may be agreed upon by the City Council and Lloyd Corporation, Ltd., for the extension of existing streets or for opening new streets for the purposes of providing proper access to the areas affected by these street vacations and to provide for the flow of traffic which will be diverted from the streets hereby vacated. The area of the land to be so dedicated when added to the area of the land described in Section 4 (b) hereof shall equal the area of the land vacated by this ordinance. Lloyd Corporation, Ltd., its successors and assigns hereby agrees that it will give its full cooperation in the im-

provement and construction of any such street or access way now or hereafter dedicated in the vicinity of the Lloyd Center and that it will not interpose any remonstrances to said improvement or construction.

Section 5. This ordinance shall be of no force and effect until the petitioner, Lloyd Corporation, Ltd., on behalf of itself, its successors and assigns shall have filed with the Auditor an acceptance in writing in form approved by the City Attorney.

Section 6. The Auditor shall file for record with the County Clerk who is ex-officio recorder of Multnomah County a certified copy of this ordinance as provided by law and like copies with the County Assessor and County Surveyor of said county, such recording to be at the expense of the petitioner.

Passed by the Council

Mayor of the
City of Portland

Attest

Auditor of the
City of Portland

Order of Council
10/13/54
DHB:gm

ORDINANCE NO. 101288

Passed by the Council, Nov. 10, 1954

/s/ Fred L. Peterson
Mayor of the
City of Portland

Attest:

/s/ Will Gibson
Auditor of the
City of Portland

ORDINANCE NO. 106640

Book 1865 page 440

An Ordinance amending Ordinance No. 101288, passed by the Council November 10, 1954, in order to provide for the substitution of certain parcels of property in Holladay's Addition to East Portland to be dedicated for street purposes by Lloyd Corporation, Ltd., in lieu of certain property now designated in Subsection (b) of Section 4 of Ordinance No. 101288, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that as one of the conditions of Ordinance No. 101288, passed by the Council November 10, 1954, Lloyd Corporation, Ltd. agreed to dedicate certain parcels of property in Holladay's Addition to East Portland in lieu of streets vacated by said ordinance; that said ordinance called for a twenty-foot dedication along the east side of N.E. 9th Avenue between N.E. Halsey and N.E. Holladay Street; that it was subsequently determined that in the interests of better planning ten feet should be dedicated on each side of N.E. 9th Avenue rather than twenty feet on the east side as called for in said ordinance; that said Lloyd Corporation, Ltd. offered to dedicate other parcels of equal area in lieu of the easterly ten feet of the twenty-foot strip; and that this substitution has the approval of the City Engineer and of the City Planning Commission; now, therefore, sub-section (b) of Section 4 of Ordinance No. 101288, passed by the Council November 10, 1954, entitled: "An Ordinance vacating, subject to conditions, all that portion of N.E. 11th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; all that portion of N.E. Clackamas Street lying between the west line of N.E. 15th Avenue and the

east line of N.E. 9th Avenue, excepting area in intersection; all that portion of N.E. Wasco Street lying between the west line of N.E. 15th Avenue and the east line of N.E. 9th Avenue, excepting certain area in intersections; all that portion of N.E. 10th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; all that portion of N.E. 12th Avenue lying between the north line of N.E. Wasco Street and the south line of N.E. Halsey Street; all that portion of N.E. 12th Avenue lying between the north line of N.E. Halsey Street and the south line of N.E. Broadway, excepting portions in intersection; all that portion of N.E. 13th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street; and all that portion of N.E. 14th Avenue lying between the north line of N.E. Multnomah Street and the south line of N.E. Halsey Street, all in the City of Portland, Oregon," is hereby amended to read as follows:

(b) Lloyd Corporation, Ltd., its successors or assigns, shall within fifteen (15) days after the beginning of the construction of the first building in the areas above described dedicate for street purposes the following areas to wit:

The following portions of Holladay's Addition to East Portland a duly recorded plat in the County of Multnomah and State of Oregon:

Lot	Area Sq. Ft.	Lot	Area Sq. Ft.
S 10′ Lot 5, Blk 71	1000	*E 10′ of Lots 5&6, Blk 100*	*1000*
N 10′ Lot 8, Blk 73	1000	*E 10′ Lots 6, 7&8, Blk 99*	*1500*
S 10′ Lots 4&5, Blk 94	2000	*E 10′ N 40′ of Lot 5, Blk 99*	*400*
S 10′ Lot 4, Blk 99	1000	*E 10′ Lots 5, 6, 7&8, Blk 206*	*2000*
W 10′ Lots 3&4, Blk 93	1000	*E 10′ Lots 5&6, Blk 221*	*1000*
E 10′ Lots 5, 6, 7&8, Blk 81	2000	*W 10′ Lot 3, Blk 222*	*500*
E 10′ Lots 5, 6, 7&8, Blk 82	2000		
N 10′ of Lot 8, Blk 113	1000		

Lot	Area Sq. Ft.
W 10′ Lot 1, Blk 205	*500*
W 10′ N 26′ Lot 3, Blk 205	*260*
W 10′ Lots 3&4, Blk 113	*1000*
W 10′ Lots 1, 2, 3&4, Blk 114	*2000*
N 10′ of E 90′ Lot 1, Blk 116	*900*
S 10′ of E 90′ Lot 4, Blk 114	*900*
W 10′ Lots 1, 2, 3&4, Blk 115	*2000*
W 10′ Lots 1, 2, 3&4, Blk 116	*2000*
N 10′ Lot 8, Blk 116	1000
N 10′ Lot 1, Blk 117	1000
N 10′ W 90′ Lot 8, Blk 117	900
S 10′ W 90′ Lot 5, Blk 204	900
S 10′ E 90′ Lot 4, Blk 203	900
N 10′ E 90′ Lot 1, Blk 136	900
S 10′ Lot 5, Blk 203	1000
N 10′ Lot 8, Blk 136	1000
N 10′ Lot 1, Blk 137	1000
N 10′ W 90′ Lot 8, Blk 137	900
S 10′ Lot 4, Blk 202	1000
S 10′ W 90′ Lot 5, Blk 202	900
S 10′ E 90′ Lot 4, Blk 201	900
S 10′ Lot 5, Blk 201	1000
N 10′ E 90′ Lot 1, Blk 156	900
N 10′ Lot 8, Blk 156	1000
S 10′ Lots 4&5, Blk 200	2000
N 10′ Lots 1&8, Blk 157	2000
E 10′ S 40′ Lot 8, Blk 157	400
E 10′ Lots 5, 6&7, Blk 157	1500
E 10′ Lots 5, 6, 7&8, Blk 158	2000
E 10′ Lots 6, 7&8, Blk 159	1500
E 10′ N 40′ Lot 5, Blk 159	400
S 10′ Lot 4, Blk 174	1000
W 10′ N 40′ Lot 4, Blk 174	400
W 10′ Lots 1, 2&3, Blk 174	1500
W 10′ N 34′ Lot 3, Blk 175	340
W 10′ S 16′ Lot 2, Blk 175	160
W 10′ Lots 1, 2, 3&4, Blk 176	2000
N 10′ E 90′ Lot 1, Blk 176	900
E 10′ N 40′ Lot 5, Blk 200	400
E 10′ Lot 6, Blk 200	500
W 10′ S 36.41′, Lot 4, Blk 199	364.1
W 10′ N 32′ Lot 3, Blk 199	320
W 10′ Lot 2, Blk 228	500
W 10′ S 40′ Lot 1, Blk 228	400
S 10′ E 90′ Lot 4, Blk 199	900
S 10′ W 90′ Lot 5, Blk 199	900
E 10′ Lots 5&6, Blk 199	1000
E 10′ Lots 5&6, Blk 176	1000
E 10′ Lots 5, 6, 7&8, Blk 175	2000
E 10′ Lots 6&7, Blk 174	1000
E 10′ N 40′ Lot 5, Blk 174	400
W 10′ N 40′ Lot 4, Blk 179	400
W 10′ Lots 1, 2&3, Blk 179	1500
W 10′ Lots 2, 3&4, Blk 178	1500

Lot	Area Sq. Ft.	Lot	Area Sq. Ft.
W 10′ Lots 2, 3&4, Blk 177	1500	W. 10′ Lot 3, Blk 299	500
W 10′ Lots 3&4, Blk 198	1000		
W 10′ S 32′ Lot 2, Blk 198	320	Total	74,664.1

Section 2. Inasmuch as this Ordinance is necessary for the imemdiate preservation of the public health, peace and safety of the City of Portland in this: In order that the description of the properties to be dedicated as streets by Ordinance No. 101288 may be corrected without further delay, therefore, an emergency hereby is declared to exist and this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council Sept. 18, 1957

/s/ Terry D. Schrunk
Mayor of the
City of Portland

Attest:

/s/ Will Gibson
Auditor of the
City of Portland

Commissioner Bowes
September 6, 1957
OIN:rb

(SEAL) Document 35508 recorded Oct 4 1957 3:43 p.m.

M. S. COHN
County Clerk

PLAINTIFFS' EXHIBIT NO. 25

[Read by Andrew Koerner Cal 4076]

Northwest Office:
Portland
Oregon

Please Address
All Communications
to the Company

LLOYD CORPORATION, LTD.
(INCORPORATED IN CALIFORNIA)

9441 Olympic Boulevard—Corner Beverly Drive
Beverly Hills, California

Telephone BRadshaw 2-5335

September 10, 1954

To the Honorable Mayor and Council
of the City of Portland

Portland, Oregon

Gentlemen:

Lloyd Corporation, Ltd. has heretofore filed petitions for the vacation of the following streets in the City of Portland, Multnomah County, Oregon:

N. E. Wasco Street lying between the present east line of N. E. 9th Avenue and the present west line of N. E. 10th Avenue.

N. E. Wasco Street lying between the present east line of N. E. 10th Avenue and the present west line of N. E. 11th Avenue.

N. E. Wasco Street lying between the present east line of N. E. 11th Avenue and the present west line of N. E. 13th Avenue.

N. E. Wasco Street lying between the present east line of N. E. 13th Avenue and the present west line of N. E. 14th Avenue.

N. E. Wasco Street lying between the present east line of N. E. 14th Avenue and the present west line of N. E. 15th Avenue.

N. E. Clackamas Street lying between the present east line of N. E. 9th Avenue and the present west line of N. E. 10th Avenue.

N. E. Clackamas Street lying between the present east line of N. E. 10th Avenue and the present west line of N. E. 11th Avenue.

N. E. Clackamas Street lying between the present east line of N. E. 11th Avenue and the present west line of N. E. 12th Avenue.

N. E. Clackamas Street lying between the present east line of N. E. 12th Avenue and the present west line of N. E. 13th Avenue.

N. E. Clackamas Street lying between the present east line of N. E. 13th Avenue and the present west line of N. E. 14th Avenue.

N. E. Clackamas Street lying between the present east line of N. E. 14th Avenue and the present west line of N. E. 15th Avenue.

N. E. 10th Avenue lying between the present north line of N. E. Multnomah Street and the present south line of N. E. Halsey Street.

N. E. 11th Avenue lying between the present north line of N. E. Multnomah Street and the present south line of N. E. Halsey Street.

N. E. 12th Avenue lying between the present north line of N. E. Wasco Street and the present south line of N. E. Halsey Street.

N. E. 12th Avenue lying between the present north line of N. E. Halsey Street and the present south line of N. E. Weidler Street.

N. E. 12th Avenue lying between the present north line of N. E. Weidler Street and the present south line of N. E. Broadway.

N. E. 13th Avenue lying between the present north line of N. E. Multnomah Street and the present south line of N. E. Halsey Street.

N. E. 14th Avenue lying between the present north line of N. E. Multnomah Street and the present south line of N. E. Halsey Street.

The reasons for such vacations and the particular circumstances for the vacations are set forth in said petitions, namely: Lloyd Corporation, Ltd. is the owner of all of the property abutting upon the streets sought to be vacated and has prepared a comprehensive plan to construct retail store buildings on said property and to provide adequate parking area adjacent to said buildings. Said project is now commonly referred to as the Lloyd Center.

Lloyd Corporation, Ltd. hereby represents that it proposes to proceed to construct the buildings and establish off-street parking areas in substantial conformity with the preliminary plans and drawings prepared by John Graham and Company, Architects and Engineers, designated LLOYD CENTER (comprising four sheets designated "Plan at Mall Level," "Plan at Second Floor, Service Level," "Plan at Multnomah Street Level," "Plan at Intermediate Parking Level") in the area (1) bounded on the south by N. E. Multnomah Street, on the east by N. E. 15th Avenue, on the north by N. E. Halsey Street and on the west by N. E. 9th Avenue, and in the area (2) bounded on the south by N. E. Halsey Street,

on the east by N. E. 13th Avenue, on the north by N. E. Broadway and on the west by N. E. 11th Avenue.

The area of the streets sought to be vacated by said petitions is approximately 385,000 square feet. In consideration of your Honorable Body passing appropriate ordinances vacating said streets, as prayed for in said petitions, Lloyd Corporation, Ltd. hereby agrees:

1. Buildings providing for a minimum of 850,000 square feet described in the preliminary plans and drawings above referred to will be constructed and off-street parking areas established substantially in accordance with said plans which have been prepared by John Graham and Company, Architects and Engineers (with possible variations to meet the needs of individual tenants or as found desirable by the architects of Lloyd Corporation, Ltd.) within five years from the date said ordinances are passed. Should said buildings not be constructed and off-street parking areas not established within said period, then and in that event Lloyd Corporation, Ltd. hereby agrees that it will dedicate for street purposes all the street areas received by it as a result of the passage of said ordinances.

2. Lloyd Corporation, Ltd. hereby agrees to dedicate for street purposes the areas now owned by it, all located in Holladay's Addition to East Portland, now within the limits of the City of Portland, Oregon, described in Exhibit A attached hereto, within fifteen days after the beginning of the construction of the first building to be erected in Area No. (1) above described.

Lloyd Corporation, Ltd. recognizes that the vacation of said streets will be made upon the condition that the rights of the owners of any sewer, water main, gas main, conduit of any kind, wire, pole, or thing used for any public service which may be located in said streets to maintain, repair and replace the same, will be reserved

to such owners. Lloyd Corporation, Ltd. agrees that it will make the necessary arrangements with the owners of all of said utilities for the removal or relocation of any of the same, if such removal or relocation is required or desirable in connection with the development of Lloyd Center.

3. As Lloyd Center is hereafter constructed according to plans which have been prepared for such development, it will be necessary and desirable to open up new streets in the vicinity thereof; for example, extensions of N. E. 15th Avenue and N. E. 16th Avenue to connect with Lloyd Boulevard and/or Oregon Street; means of access to and egress from the projected Banfield Expressway in the vicinity of N. E. 16th Avenue both to the north and south of said Expressway; new approaches to N. E. 12th Avenue and N. E. Irving Street and/or N. E. Hoyt Street. Lloyd Corporation, Ltd. hereby agrees that it will dedicate for street purposes areas of land now or hereafter owned by it in the vicinity of Lloyd Center as may be agreed upon between the City Council and Lloyd Corporation, Ltd. for the extension of existing streets or for opening new streets for the purpose of providing proper access to Lloyd Center and the area in close proximity thereof, and to provide for the flow of traffic which will be diverted from the streets proposed to be vacated by said petitions, in an amount so that the total area thereof (when added to the areas of the parcels described in Exhibit A attached hereto) will equal the area of the land vacated by said petitions. These additional areas will be dedicated at such times as may be required and within a period of five years after the start of the construction of the first building in Area No. (1) above described.

There is attached hereto a certified copy of the resolution of the board of directors of Lloyd Corporation, Ltd.

authorizing the undersigned officers to sign this commitment.

Yours very truly,

LLOYD CORPORATION, LTD.
By /s/ [Illegible]
President

Attest:

/s/ [Illegible]
Assistant Secretary.

PLAINTIFFS' EXHIBIT NO. 26

July 28, 1954

From Dept. of Bureau of City Engineer

To Dept. of Public Works

Addressed to Commissioner Wm. A. Bowes

Subject Vacation of Certain Streets for the Proposed Lloyd Corporation, Ltd. Development

Dear Commissioner:

Under separate letters I have on this date returned the eight petitions of Lloyd Corporation, Ltd., for the vacation of certain streets, more particularly described in the petitions. In each instance I have recommended that the petition be granted in part only, and set forth the limits of the portions recommended for vacation. This was necessary since we have required Lloyd Corporation, Ltd. to dedicate sufficient properties to widen the perimeter streets of this proposed development to a width of 80 feet.

To avoid confusion and simplify these proceedings, this my written report on the proposed Lloyd development, should be considered a part of each of my reports on the above-mentioned petitions.

Upon investigating these proposed vacations, and after considering all phases of this project, it is recommended that the streets as shown in yellow on the attached map be vacated subject to the following conditions and restrictions:

1. That the 10 and 20 foot strips as shown in red on the attached map be dedicated as street for the widening of N.E. Multnomah Street, N.E. Halsey Street, N.E. 7th Avenue, N.E. 9th Avenue, N.E. 15th Avenue, and N.E. 16th Avenue.

2. That N.E. 9th Avenue, N.E. 15th Avenue, N.E. Halsey Street and N.E. Multnomah Street be widened by reconstructing the curbs and sidewalks adjacent to the Lloyd Tract to provide for an ultimate 60 foot roadway.

3. That N.E. 7th Avenue, N.E. 9th Avenue, N.E. Holladay Street, N.E. Multnomah Street and such other streets as are deemed necessary shall be widened by reconstructing the sidewalk and curb in accordance with the plans and specifications prepared by this office to provide for ultimate 60 foot roadway.

4. That the petitioner, Lloyd Corporation, Ltd., enter into an appropriate agreement with the City to insure the dedication and improvement of the proposed connecting street between N.E. Oregon Street and N.E. 16th Avenue, the proposed connection between N.E. 15th Avenue and N.E. Holladay Street, the interchange at N.E. 12th Avenue and N.E. Irving Street, and the in-and-off ramps for the Banfield Expressway.

Copies of the communications from the Portland Gas & Coke Company and the Bureau of Fire are attached. Our usual utility clause should be broad enough to protect their existing installations.

The street area recommended for vacation amounts to 385,000 square feet, or 8.838 acres, and the dedications to be made by the petitioner will in all probability be in excess of the area vacated.

In order to permit Lloyd Corporation, Ltd. to proceed with the detail planning of the project without undue

delay, it is recommended that the petitions be heard at the earliest possible date.

Yours very truly,

/s/ L. G. Apperson
L. G. APPERSON
City Engineer

OEA:fjn

PLAINTIFFS' EXHIBIT NO. 28

Aud. 99-175-120
4-65 2M

OFFICE OF
AUDITOR OF THE CITY OF PORTLAND
PORTLAND, OREGON 97204

Room 202
City Hall

COPY CERTIFICATE

STATE OF OREGON,)
County of Multnomah,) ss
CITY OF PORTLAND,)

I, RAY SMITH, Auditor of the City of Portland, do hereby certify that I have compared the following copy of Section 3-407, SPECIAL PATROLMENT OR POLICEMEN, of Ordinance No. 77780, passed by the Council September 3, 1942, as in force and effect from date of passage to date of certification, with the original thereof, and that the same is a full, true and correct copy of such original SECTION 3-407, ADMINISTRATION CODE and of the whole thereof as the same appears on file and of record in my office, and in my care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the City of Portland affixed this 6th day of November, 1969.

/s/ Ray Smith
Auditor of the
City of Portland

By /s/ Edna M. Cervera
Deputy

[SEAL]

nor shall any member, directly or indirectly, interest himself or interfere in any manner whatever in the employment of any attorney to aid in the defense of any person arrested or accused; for any violation of either of the foregoing provisions the person so offending shall be immediately removed from the police force.

Upon complaint of any person alleging a violation of this section the council shall summon the officer accused before it and shall hold a summary hearing with power to subpoena witnesses and to compel the production of all necessary evidence; and if it finds that a violation of this section has been committed by such officer he shall immediately be dismissed from the force and shall be ineligible for reappointment. [Ch. 1903, sec. 185; ch. ord. 1928, rev. sec. 45.]

Section 3-407. SPECIAL PATROLMEN OR POLICEMEN.

The Council is hereby authorized to appoint persons of suitable character as special patrolmen or policemen, but such special policemen shall not be paid by the city for their services as policemen. They shall serve during the pleasure of the Chief of Police. They shall observe the rules of deportment and conduct applicable to regular patrolmen. They shall, in the performance of their duties, be subject to the orders of commanding officers and must report at such intervals as shall be required. They shall, at all times, cooperate with regular patrolmen in the performance of their duties. [Ch. 1903, sec. 186, ch. ord. 1928 rev., sec. 46, as amended by Ordinance No. 77612 passed July 30, 1942.]

Section 3-408. DUTIES OF POLICE FORCE.

The police force of the City of Portland shall at all times of the day and night within the boundaries of said city preserve the public peace, prevent crime, arrest

offenders, protect rights of persons and property, guard the public health, preserve order, remove nuisances existing in streets, roads, public places, and highways, report all leaks or other defects in water pipes and sewers, and street lights not burning to the proper authorities, provide a proper force at every fire in order that thereby the firemen and property may be protected, protect strangers and travelers at the steamboat and ship landings and railroad stations, and generally obey and enforce all ordinances of the city council and criminal laws of the state and of the United States. [Ch. 1903, sec. 189; ch. ord. 1928, rev. sec. 49.]

Section 3-409. COUNCIL IN EMERGENCY TO APPOINT TEMPORARY EMPLOYES.

The Council in case of any mob, riot, pestilence, or on days of public demonstration may appoint such temporary policemen as it may deem necessary, who shall have all the powers and perform all the duties of regular policemen. Such appointments shall not continue beyond the emergeney. [Ch. 1903, sec. 192; ch. ord. 1928, rev. sec. 51.]

DEFENDANT'S EXHIBIT NO. 52

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 69-127

[Filed Jun. 18, 1969, Donald D. Sullivan, Clerk, by /s/ J. Smith, Deputy]

DONALD M. TANNER, BETSY WHEELER, and SUSAN ROBERTS,

Plaintiffs,

vs.

LLOYD CORPORATION, LTD.,

Defendant.

Taken June 3, 1969, at Portland, Oregon

Deposition of BETSY WHEELER, one of the plaintiffs, a witness of lawful age, taken on behalf of the defendant, in the above entitled cause, pursuant to stipulation hereinafter set forth, before Harry L. Libby, Official Court Reporter for the Circuit Court of the State of Oregon, County of Multnomah, on Tuesday, June 3, 1969, Eleventh Floor of the Loyalty Building, Portland, Oregon.

* * * *

[14] [BY MR. MILLER:]

Q What did you do after you began distributing the leaflets?

A Well, we walked around distributing until we were told we could not do that inside, and we asked where we could do it, and they said outside, and we went to the west side and distributed on the sidewalk outside as people were coming in from the parking lot to go in. We

did that for awhile and then we went to the restaurant and distributed some there and went back again, and we were confronted again by the Security Guard as we were distributing and distributed some more on the sidewalk and left, going, distributing on the way, again confronted and eventually left.

Q What restaurant did you go to?

[15] A The one by the skating rink.

* * * * *

[19] Q How many leaflets did you bring with you when you came there?

A I have no idea.

Q Did you get rid of all of them while you were there?

A Most of them.

Q Where did you go from—did you go from Halsey Street sidewalk to the restaurant?

A Yes.

Q Is that the first place you went after you left the Halsey Street sidewalk?

A Yes.

Q Where did you go when you left the restaurant?

[20] A Back to Halsey Street again.

Q And by that time had you been encountered only once by the security officer?

A Except they were concealing, following us, and we were waving to them and talking to them.

Q Were you or did you attempt to go anywhere near the ice rink to distribute leaflets again after you went to the restaurant?

A On the way, or on the way out of distributing?

Q On the way out from the restaurant?

A No. From Halsey Street on the way home, and also on the way back from the restaurant to Halsey Street we passed them out.

* * * * *

DEFENDANT'S EXHIBIT NO. 54

November 26, 1968

Donald McLaren Tanner
906 SE Ankeny
Portland, Oregon Age: 25

PHONE: 232-5562

On November 14, 1968, I was at Lloyd Center shopping Center in Portland, Oregon. I was standing on the sidewalk in front of the Meier and Frank Department Store, passing out literature which invited the public to a service that evening at Centenary Wilbur Church.

At approximately 11:00 a.m. I was approached by a security guard. He requested that I leave, stating that the Lloyd Center allowed no one to pass out literature within the Center. He informed me that leafletting was permitted only on the sidewalks next to public streets.

I then contacted Jeff Blakly, the organizer of the leafletting, who contacted Mrs. Deinum of the ACLU. She stated that she had contacted the Lloyd Center management earlier in the day and informed them that she thought we had the right to leaflet inside the Center.
I then returned to my position in front of the Meier and Frank store. At approximately 11:30 a.m. another security guard approached me and requested that I leave. I informed him that a representative of the ACLU had told the manager that I had the right to leaflet inside the Center. The guard said that we should talk to the manager and I accompanied him to the manager's office. The manager was not there, but the Chief of security stated that Lloyd Center was private property and that if I persisted he would request the Portland Police to arrest me for trespassing. If I did not tell him my name

and persisted, he said that he would put out a warrant for a John Doe arrest.

I left the office and proceeded to a phone for the purpose of contacting the ACLU. Before I made the call, the second security guard approached me with a man he introduced as Mr. Horn, the manager of Lloyd Center.

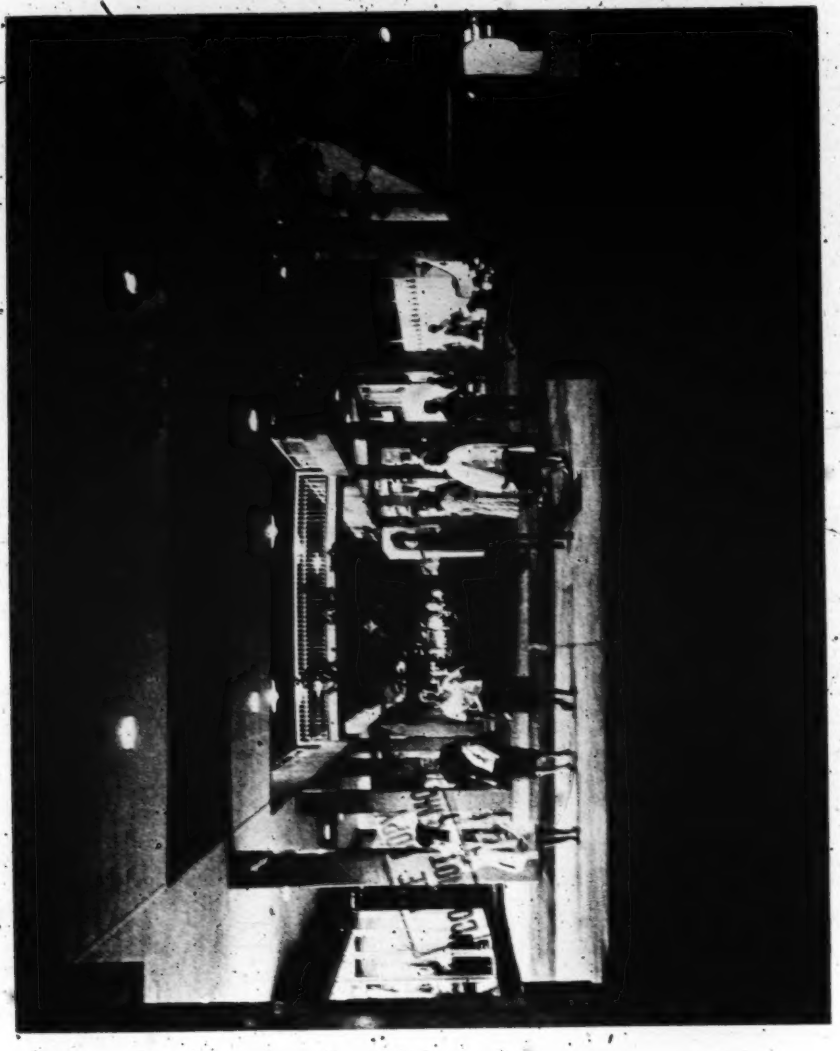
Mr. Horn repeated the statements of the security chief, stating that Lloyd Center is private property and that if I persisted in leafletting, he would have the Portland Police arrest me for trespassing. I stated that I did not think the sidewalks within Lloyd Center were private property. He said that he thought that they were, but that a court would have to decide. He repeated that if I persisted in leafletting, he would have me arrested. I then called the ACLU and Mrs. Deinum said she would call the Lloyd Center manager.

Later that afternoon I called Mrs. Deinum to obtain the results of her conversation. She said that if I returned to leaflet, I would probably be arrested. Also ACLU would be unable to post bond, but they would defend me at a hearing, although they were not really ready at that time. I did not return to Lloyd Center.

Signed: Donald McLaren Tanner
DONALD MCLAREN TANNER

November 26, 1968
Date

DEFENDANT'S EXHIBIT NO. 55A



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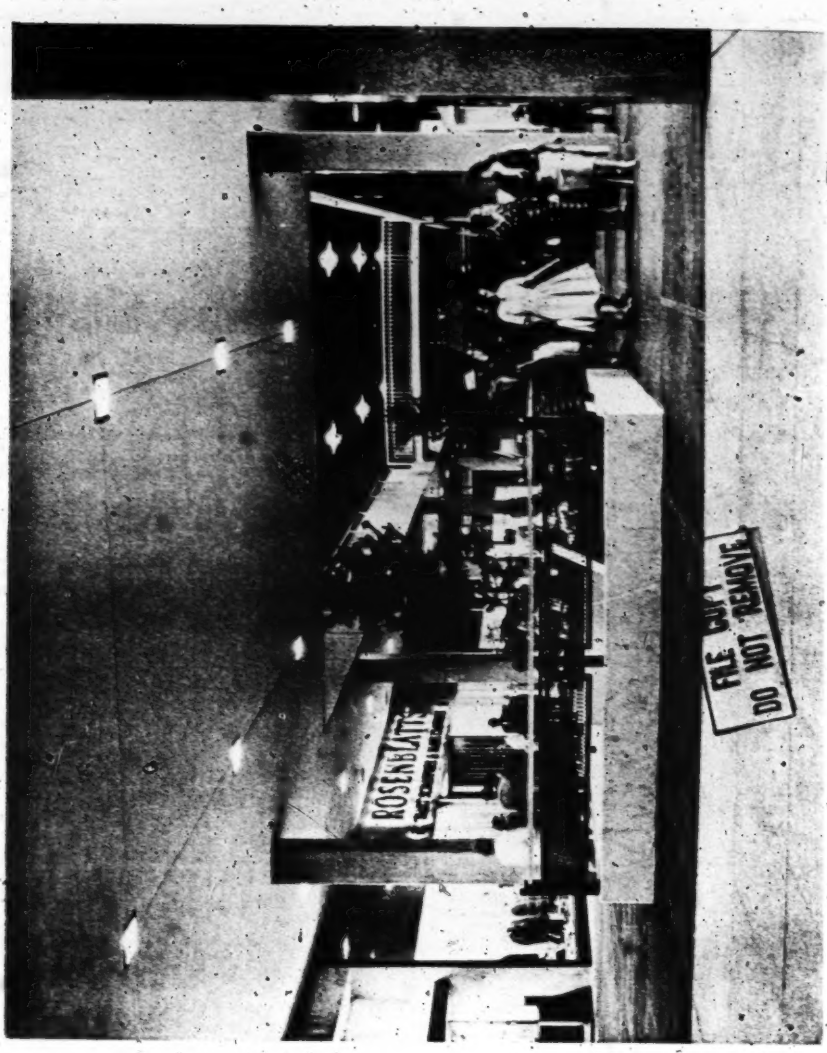

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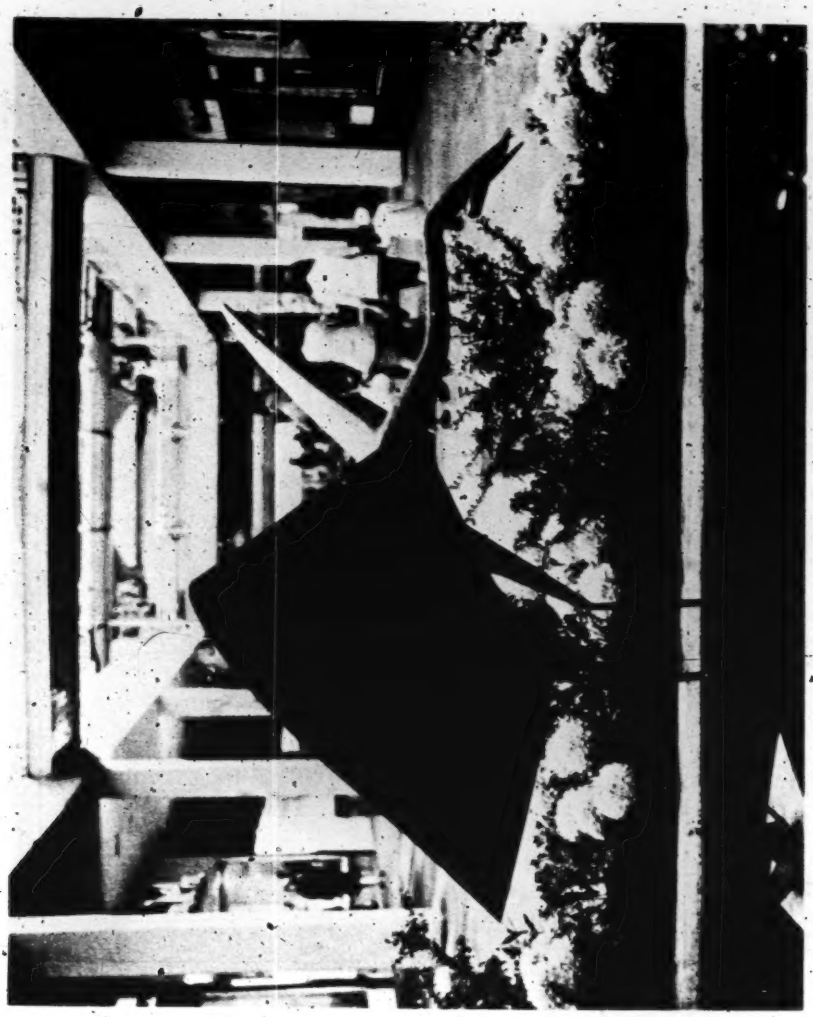


Defendant's Exhibit No. 55A-V

234

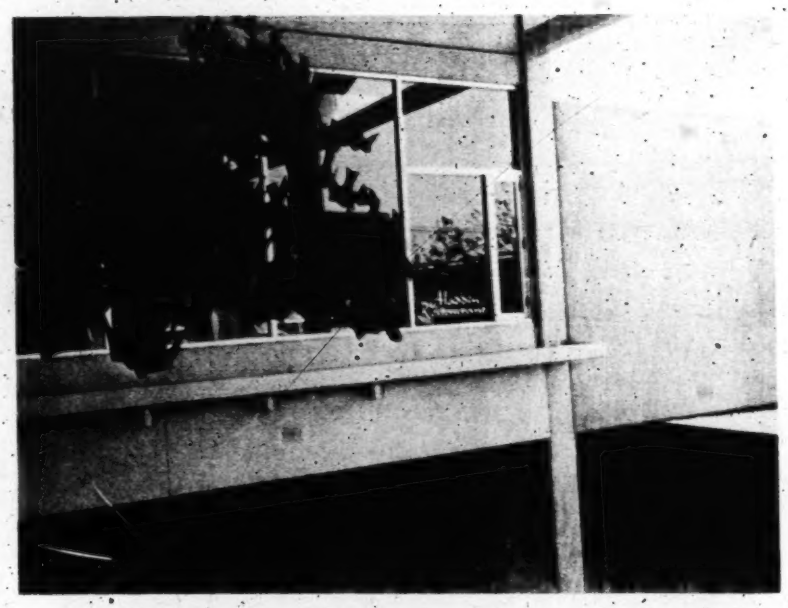
DEFENDANT'S EXHIBIT NO. 55E-F

DEFENDANT'S EXHIBIT NO. 55G-H

Defendant's Exhibit No. 55A-V

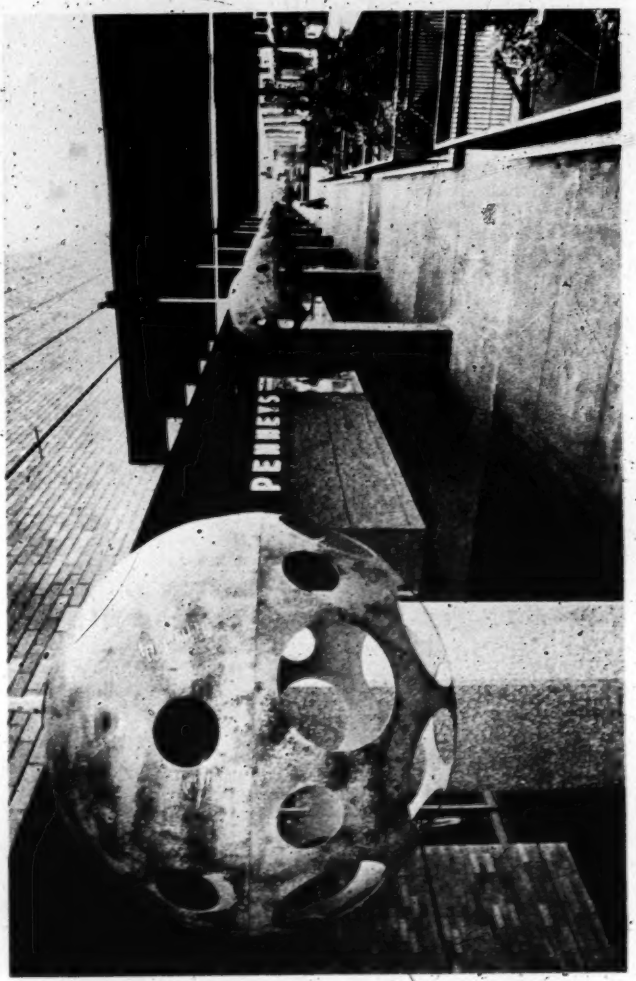
236

DEFENDANT'S EXHIBIT NO. I-J



DEFENDANT'S EXHIBIT NO. 55K-L

DEFENDANT'S EXHIBIT NO. 55M

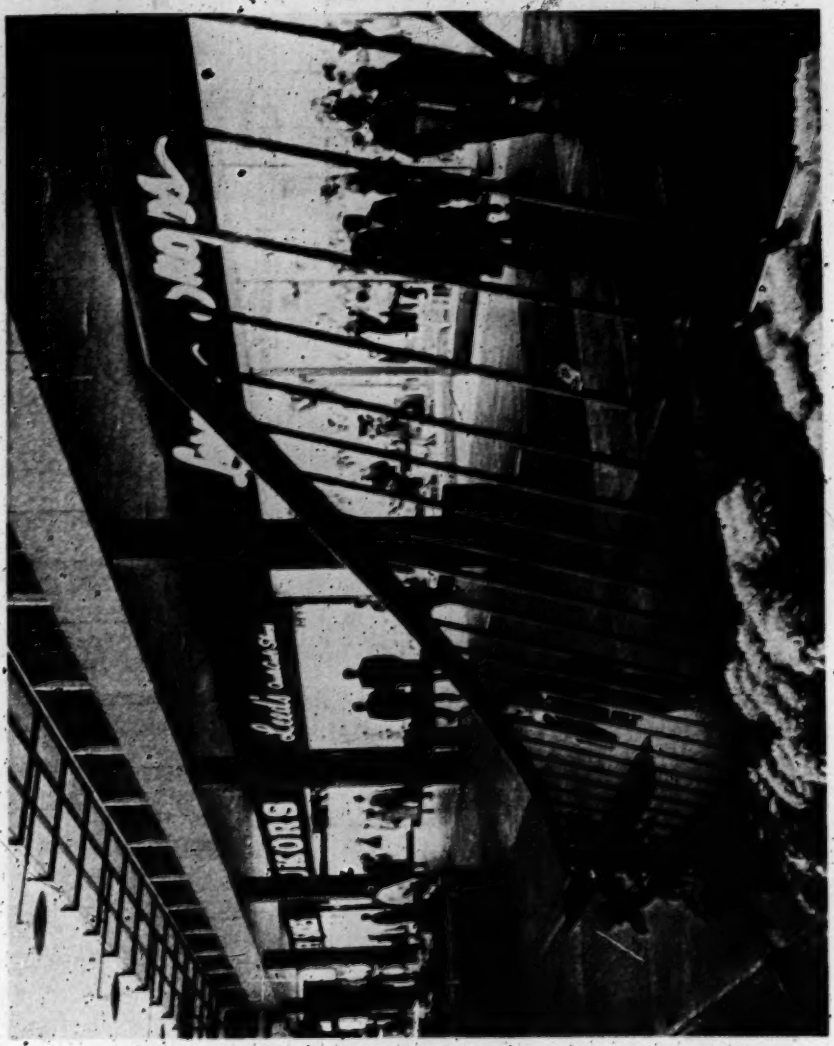


DEFENDANT'S EXHIBIT NO. 55N

Defendant's Exhibit No. 55A-V

240

DEFENDANT'S EXHIBIT NO. 550



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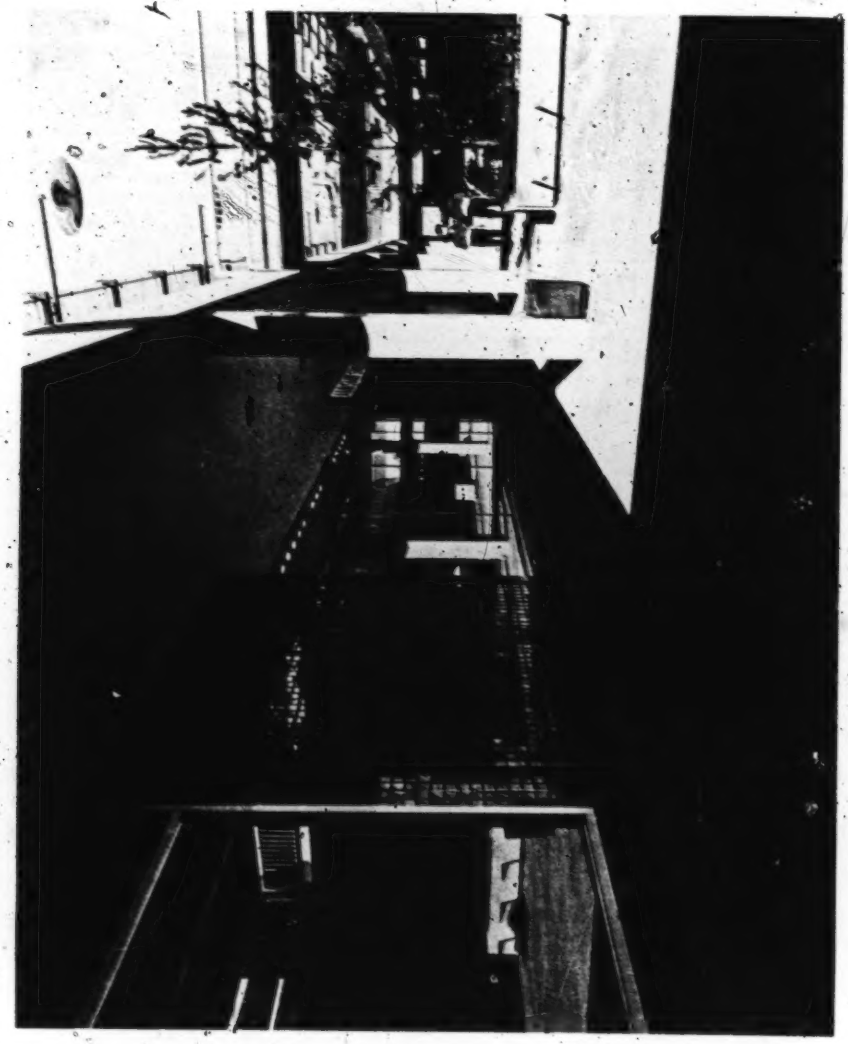

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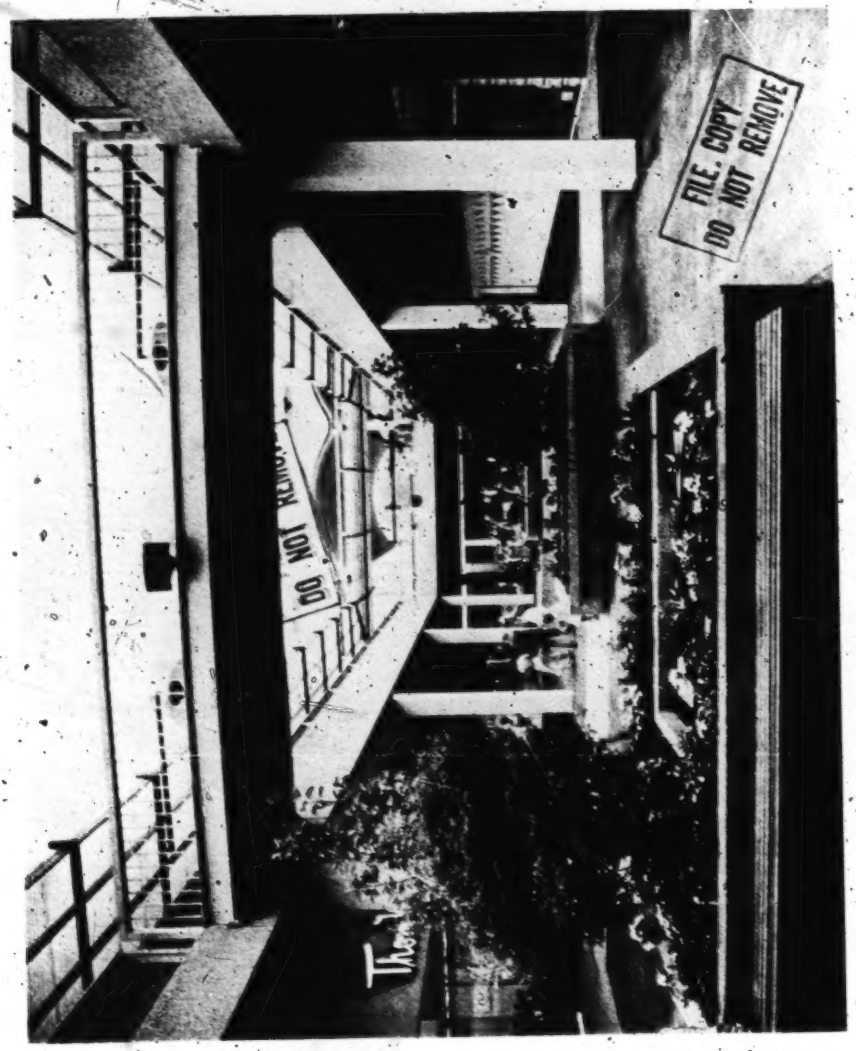

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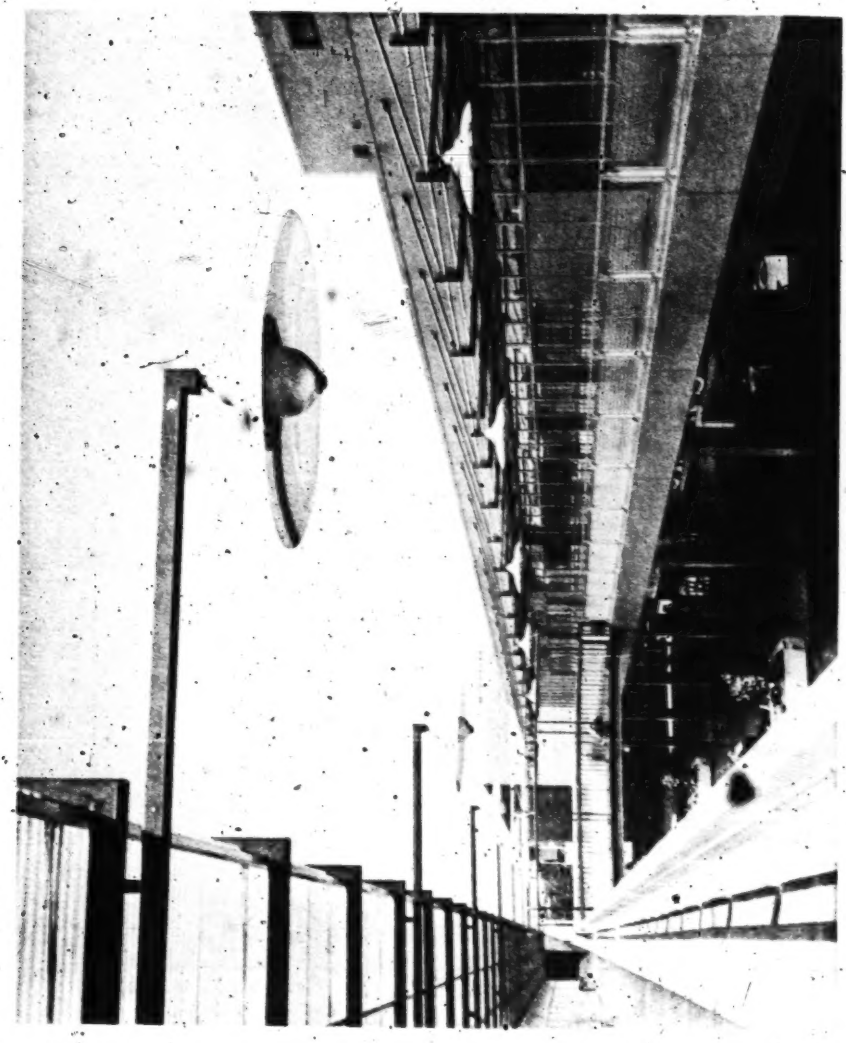

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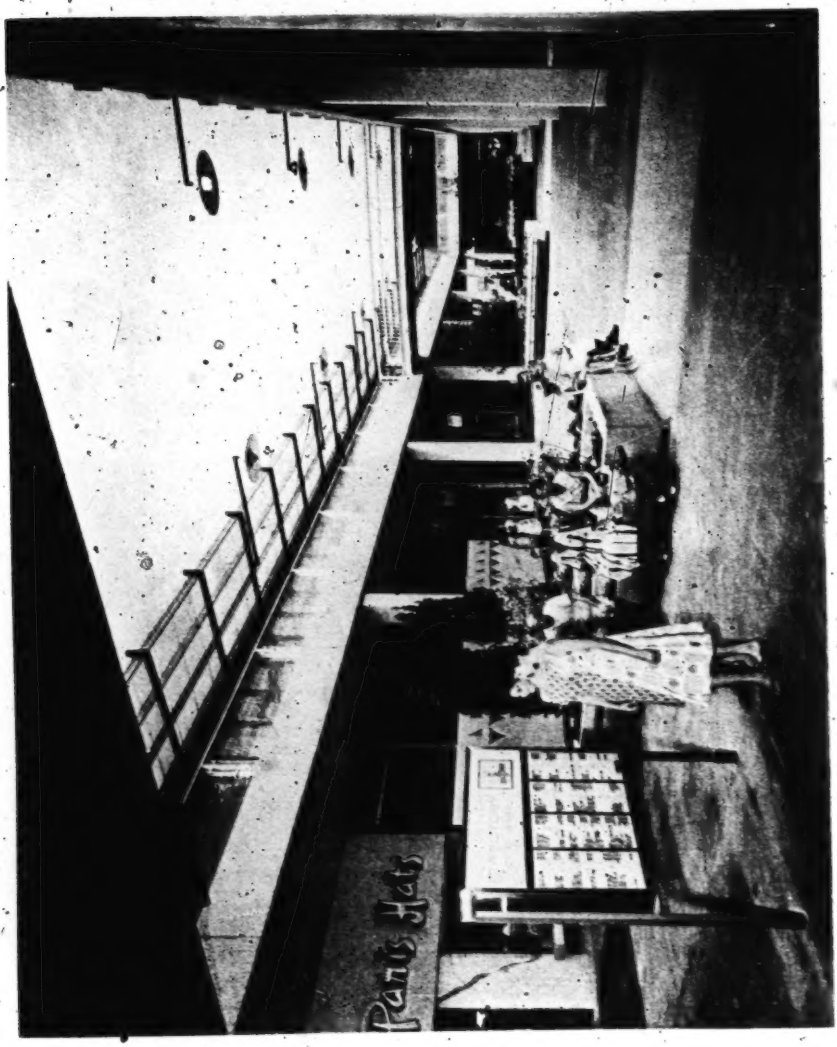

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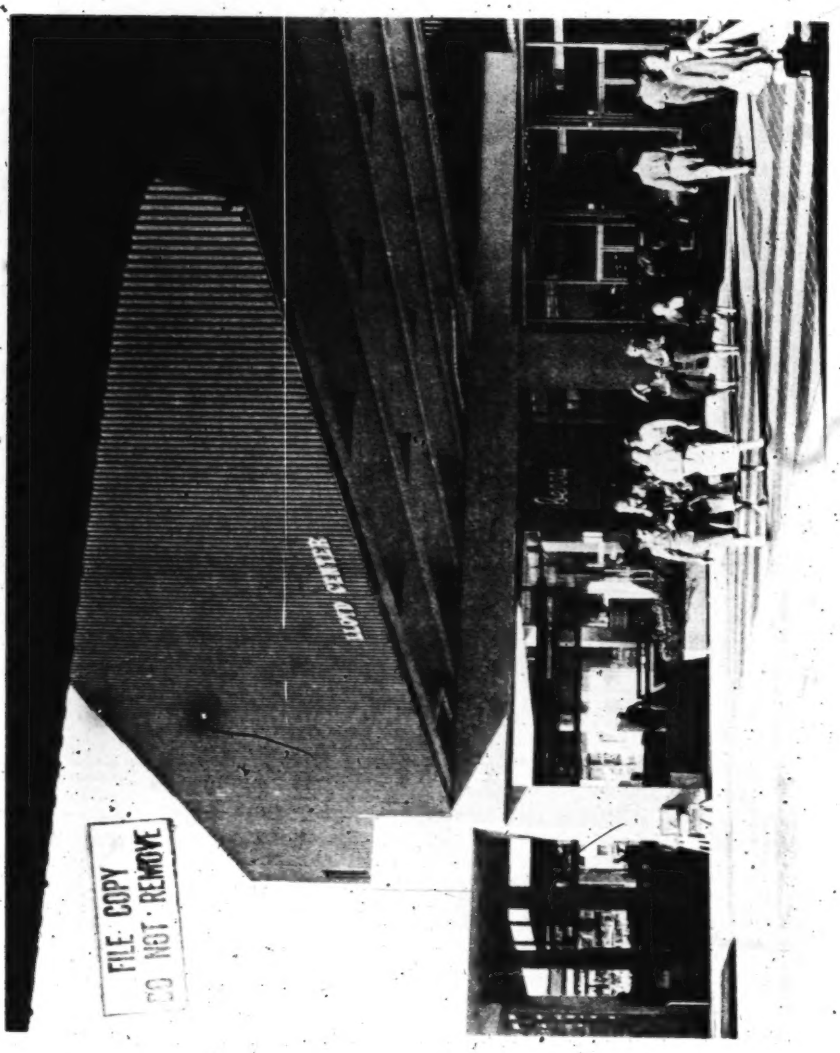

DEFENDANT'S EXHIBIT NO. 55U

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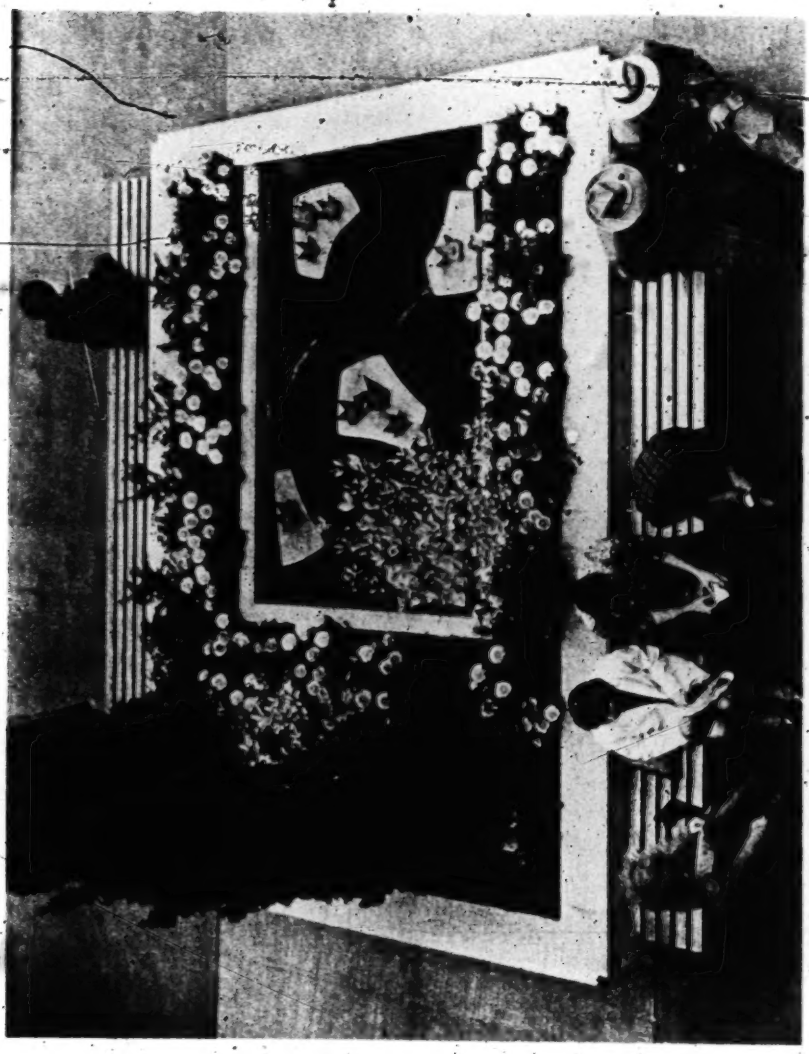

DEFENDANT'S EXHIBIT NO. 56

ARTICLE 12. COMMON AREAS—DEFINITION; OPERATION; RIGHT OF WAY:

a. The term "common areas" means all areas in the Center other than commercial areas and improvements intended for renting, including but not limited to parking lots, decks and ramps, streets, curbs, sidewalks, subways, roadways, passageways, loading platforms, malls, parkways, corridors, garden courts, culverts, tunnels, utility and sewer lines, landscaping, drainage, lighting facilities, policing facilities, signs, customers' facilities including washrooms, comfort rooms, lounges, drinking fountains, toilets, stairs, ramps, escalators, elevators, shelters, porches, bus stations and any and all other areas, buildings, improvements, facilities and appurtenances used or intended to be used from time to time in common by or for tenants of the Center or by customers or invitees of such tenants.

b. Landlord shall, at Landlord's sole cost and expense, except for Tenant's proportionate share thereof as hereinafter provided, maintain, control, manage and operate the common areas in a reasonable and proper manner as Landlord may from time to time deem efficient and appropriate for the best interests of the Landlord and the tenants of the Center.

c. Tenant shall pay to Landlord upon demand but not oftener than once each calendar month as additional rent (which additional rent may be estimated by Landlord subject to adjustments in future billings to Tenant) Tenant's proportionate share of all costs and expenses of operation and maintenance of said common areas, including but not limited to lighting, heating, insurance, cleaning, snow removal, painting, policing, gardening and

landscaping and maintenance including but not limited to such repair of paving, curbs, walkways, driveways, landscaping and drainage and lighting facilities as may be from time to time necessary to keep the same in good condition and repair, determined by the ratio which the floor area of the demised premises bears to the total of the floor area from time to time occupied by all other tenants in the Center. Such costs shall not include real estate taxes, special assessments, or depreciation of the original investment, except as provided in paragraph e of this Article. Such operating and maintenance cost and expense shall be computed on an annual basis under generally accepted accounting principles. On or before March 31 of each year Landlord shall determine and furnish to Tenant a statement showing in reasonable detail the cost and expense of maintaining said common areas during the preceding calendar year. To the extent Tenant's proportionate share of said costs and expenses is greater or less than the sum actually billed to and paid by Tenant therefor during said year, the difference shall be billed or refunded as the case may be.

"Floor area" means, with respect to each building in the Center and the demised premises, the actual number of square feet of rentable floor space within the exterior faces of the exterior walls (except party walls as to which the center thereof instead of the exterior face thereof shall be used) of all floors, first basements and sidewalk subspaces or parts thereof within the exterior limits of each of said buildings and the demised premises, but there shall not be included space on the roofs or penthouses or other structures on roofs unless used as selling space. No deduction or exclusion shall be made from floor area by reason of columns, stairs, elevators, escalators, or other interior construction or equipment. Changes in any particular floor area occurring during any calendar month shall be effective on the first day of the next succeeding calendar month.

In the event Landlord shall at any time during the term of this lease construct a hotel, office building or other building used predominantly for non-retail purposes on the area between N. E. 13th Avenue and N. E. 16th Avenue, south of N. E. Multnomah Street, such hotel, building or buildings together with portions of such areas as may be adequate to provide parking for the tenant or tenants of said hotel, building or buildings shall be excluded from the Center for the purpose of this paragraph c of Article 12.

d. Landlord reserves the right to promulgate from time to time such reasonable rules and regulations relating to the use of the common areas and any part of parts thereof as Landlord may deem expedient and for the best interests of the tenants of the Center, and Tenant agrees to abide by such rules and regulations and to cooperate in the observance thereof. Said rules and regulations shall be binding upon Tenant upon delivery of a copy thereof to Tenant in the manner required for delivery of notice under Article 41 of this lease.

e. Landlord may require the payment of a fee or charge for the use of the parking areas, or a portion thereof, which may be by meter or otherwise. The revenue so derived (after expenses of collection) shall first be applied to taxes and assessments levied against the common area, and depreciation thereon, and any excess thereafter shall be applied to costs and expenses of operation and maintenance as defined in paragraph c of this Article, before apportionment of said costs and expenses among the tenants. Any further excess shall be retained by Landlord. If taxes and assessments are not separately assessed on or apportioned to the common areas by the tax assessor, Landlord shall fairly apportion them.

f. During the term hereof Tenant, its employees, customers and invitees, subject to the provisions of Article

4, Article 17, paragraph d, and to such reasonable rules and regulations as Landlord shall make from time to time, shall have the continuous right to use jointly with others the common areas except for those portions thereof which are used for maintenance and service of the Center.

g. Landlord, if it deems necessary in order to prevent the acquisition of public rights, may from time to time temporarily close all or any portion of the common areas, erect private boundary marks or take such action as may be reasonably appropriate for that purpose.

h. Subject to the provisions of paragraph f of this Article 12, all common areas which Tenant may be permitted to use are to be used under a revocable license, and if the amount of such areas be diminished, obstructed or changed, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

DEFENDANT'S EXHIBIT NO. 59

RESOLUTION

WHEREAS the members of this Association are interested in the maintenance of the malls and parking lots of the Lloyd Center in a clean, attractive condition, permitting the orderly and unobstructed use thereof by the customers and prospective customers of members, free from noise and other annoying or distracting factors, and

WHEREAS said members believe that the selling of merchandise, solicitations, distribution of literature, group or individual demonstrations, political campaigning (except by special invitation of the Center), loitering and other similar activities in and around the malls and parking lots in Lloyd Center, annoy the customers of Association members and increase the cost of maintenance and of measures of security, and are detrimental to the interests of the members and their businesses and the welfare of their customers and prospective customers, and

WHEREAS although Lloyd Corporation has been notified generally from time to time by individual members of their said desires in this matter, it is advisable to again call it to the Lloyd Corporation's attention,

NOW, THEREFORE, it is RESOLVED that, forthwith, Lloyd Corporation be advised again of the interests and desires of this Association and its members, as hereinabove evidenced, and that it be requested to take and continue to take all steps which it can lawfully and properly take and continue to take to prevent the occurrences mentioned herein.

By vote of the Lloyd Center Merchants Association at its annual meeting held in the Lloyd Center Auditorium this 11th day of February, 1969.

/s/ Robert W. Leigh
President

/s/ William E. Wood
Secretary

DEFENDANT'S EXHIBIT NO. 60

[Written Statement of Architectural Expert]

The design objective for a modern shopping facility is to create the most effective device for merchandising possible with the resources available.

In order to make shopping easy and pleasant, and to help realize the goal of maximum sales, the shops are grouped about special pedestrian ways or malls. Here the shopper is isolated from the noise, fumes, confusion and distraction which he normally finds along city streets, and a controlled, carefree environment is provided to entice him to "linger longer and purchase more."

This means that the appearance of the buildings housing the shops, and the mall finishes, landscaping, sculpture, fountains, and other amenities, must be interesting and pleasant, but not spectacular and thus distracting. In short, the malls must be somewhat of a place of escape and refuge from worries and pressures of the everyday world. To this end, the designer utilizes sculpture which is humorous, abstract, and non-controversial in implication, or is based upon natural subjects such as birds and fish, simplified in form. Colors and landscaping designs are coordinated, and limitations are placed upon tenant shop front design and signing. A public address system is provided throughout for purposes of broadcasting "light and carefree" music.

Supreme Court of the United States

No. 71-492 ---*October Term*, 19

Lloyd Corporation, Ltd,

Petitioner,

v.

Donald M. Tanner et al.

ORDER ALLOWING CERTIORARI. Filed January 17 ---------- , 19 72.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth ---------- Circuit is granted.

FILE COPY

OCT 5 1971

E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-492

LLOYD CORPORATION, LTD.,
Petitioner,

v.

DONALD M. TANNER, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE BLACK, JR.
ROBERT J. MILLER
BLACK, KENDALL, TREMAINE, BOOTHE & HIGGINS
520 S.W. Sixth Avenue
Portland, Oregon 97204

JOHN H. PICKERING
WILMER, CUTLER & PICKERING
900 17th Street, N.W.
Washington, D. C. 20006

Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

LLOYD CORPORATION, LTD.,
Petitioner,

v.

DONALD M. TANNER, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Lloyd Corporation, Ltd. prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on July 7, 1971, affirming the judgment of the United States District Court for the District of Oregon entered January 27, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet officially reported. The opinion of the District Court is reported as *Tanner v. Lloyd Corporation, Ltd.*, 308 F. Supp. 128 (D. Ore. 1970). The opinions are reprinted in the Appendix commencing on pages 2a and 6a, respectively.

JURISDICTION

The judgment of the Court of Appeals was entered July 7, 1971. This Court has jurisdiction to review the judgment by Writ of Certiorari under 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Does the First Amendment require the petitioner, as the owner of a shopping center, to open its land to all noncommercial handbilling even though the purpose of the handbilling is not related to the petitioner's use of the land or to any activity being conducted thereon, and use of the petitioner's land is not necessary to accomplish the purpose of the handbilling?

In the event this petition is granted, the petitioner reserves the right to argue two further questions, *i.e.*, whether a private land owner's threat to cause an arrest for trespass on his land is state action within the meaning of the Civil Rights Act, and, if it is, whether the District Court should have abstained from interfering with enforcement of state trespass law in this case where there was no bad faith, no irreparable harm and no arrest, even though one respondent continued to handbill on the petitioner's land after being asked to stop.[1]

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[1] *See Watkins* v. *Oaklawn Jockey Club*, 183 F.2d 440 (8th Cir. 1950), holding that action by employees of a private company (who were also police officers) was not state action. If state action is involved, the trial court should not have decided this case because the national policy stated in *Douglas* v. *City of Jeanette*, 319 U.S. 157 (1943), and restated in *Cameron* v. *Johnson*, 390 U.S. 611 (1968), is that in the absence of irreparable harm or bad faith, federal courts should abstain from interfering with the enforcement of state law. *See also Samuels* v. *Mackell*, 401 U.S. 66 (1971); *Younger* v. *Harris*, 401 U.S. 37 (1971); *Boyle* v. *Landry*, 401 U.S. 77 (1971).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment I.

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment V

"No person shall . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Statutes

Oregon Revised Statutes § 164.460. Entry on lands and refusal to depart; what constitutes inclosure.

"(1) Any person, other than an officer on lawful business, who goes or trespasses upon any inclosed lands or premises not his own, and upon verbal, written or printed notice of the owner or person in lawful occupation of the lands or premises fails or refuses to depart therefrom immediately and remain away until permitted to return, shall be punished upon conviction of a fine of not more than $50."

Portland City Ordinance § 16-613. Trespass.

"(a) It is unlawful for any person other than an officer on lawful business wilfully to trespass upon or damage any real or personal property of another.

"(b) It shall be deemed a trespass under this section to enter or be upon any enclosed real property without the consent, express or implied, of the owner or lawful occupant of the real property.

"(c) It shall be deemed a trespass under this section to enter or be upon any real property not enclosed when upon oral, written or printed notice of the owner or lawful occupant of the real property, the person entering or being thereon fails or refuses to depart therefrom immediately and remain away until permitted to return."

STATEMENT OF THE CASE

The petitioner, Lloyd Corporation, Ltd., owns the land and buildings that are used as a shopping center in an area known as Lloyd Center in Portland, Oregon. The respondents are three individuals who sought to distribute handbills promoting what they called "National Draft Card Turn-In Day" on the petitioner's private property.

On November 14, 1968, the petitioner received a telephone call from the American Civil Liberties Union advising that handbillers would appear on the petitioner's land and that the Portland police had been notified. The following is an excerpt from the agreed facts in the court's Pre-trial Order, describing the incident:

> "On November 14, 1968, a number of persons, including the plaintiffs, distributed to passersby at various points upon the malls and walkways of the privately owned property of defendant in Lloyd Center, certain anti-war leaflets . . . . Such distribution of literature occurred without permission of the defendant. Security officers employed by the defendant told the plaintiffs and the others so distributing leaflets to cease such distribution on and from the privately owned property of the defendant in Lloyd Center, and that if they desired to make further distribution, to make such distribution from the public streets and sidewalks in the center. Employees of the defendant advised the plaintiffs that if they did not cease distribution from the privately owned portions of Lloyd Center, they would be subject to arrest. Such distribution was then continued by the plaintiffs and others from the public streets and side-

walks in Lloyd Center. No arrests were made and no warrant for arrest was requested or applied for by defendant."

On March 7, 1969, the respondents filed a Complaint in the United States District Court for the District of Oregon asking for an injunction and a declaratory judgment. They alleged that the petitioner had acted under state statute and municipal ordinance to deprive them of constitutional rights by refusing to give them permission to distribute their handbills on the petitioner's private shopping center land. They alleged that the petitioner had a policy prohibiting noncommercial handbilling on its private property and that the federal court had jurisdiction by virtue of the Civil Rights Act (42 U.S.C. § 1983 and 28 U.S.C. § 1343(3)).

The petitioner admitted that it had always prohibited handbilling on its land (even by its own tenants), with the single exception that after this Court's decision in *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), it did not prohibit handbilling that was a criticism of or was otherwise directly related to the petitioner's or its tenants' use of the land.

At the trial, the following facts were established by stipulation or uncontroverted testimony.

The petitioner's shopping center contains stores, buildings, malls, walkways and open and covered areas for automobile parking. There are no residences or overnight accommodations in Lloyd Center. No one lives there. There are sixty-six linear blocks of publicly owned sidewalks and a public park that are inside Lloyd Center. Some of the stores open directly onto the public sidewalks, some open onto the interior privately owned malls and some stores open onto both. This case concerns only the property that is privately owned by the petitioner in Lloyd Center. All parties agree that the respondents have the right to handbill on the public sidewalks and in the public park.

The petitioner has a great interest in making its land most effective as a shopping center. The malls and walkways are designed and decorated to promote retail business, to please customers and to encourage prospective customers of tenants to come there where they may view and buy merchandise. The petitioner and its tenants spend approximately $350,000.00 each year to maintain the privately owned common areas in the shopping center and to enhance customer motivation. The petitioner's investment is approximately $34,000,000.00.

The petitioner's business is collecting rental income. Tenant merchants do not want handbilling on Lloyd's land. The stipulated testimony was that it is distracting and detrimental to business. The trial court acknowledged that handbilling interferes with customer motivation to buy.

Two shoppers expressed annoyance at the respondents' handbilling during the brief time that they were at the center. Another shopper expressed displeasure with the petitioner for asking the respondents to leave.

The purpose of the respondents' handbilling was to promote what they called "National Draft Card Turn-In Day." They advertised a meeting to be held that night in another part of Portland. The message and purpose of the handbills were not related to any activity carried on in Lloyd Center by the petitioner or any of its tenants.

After a trial without a jury, the District Court rendered an opinion and entered a judgment as follows:

> "1. Plaintiffs have a right to distribute noncommercial handbills in a peaceful and orderly manner in the malls and walkways of Lloyd Center at times when they are open to general public access;
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> "2. For the reasons set forth in the Court Opinion dated January 15, 1970, defendant Lloyd Corporation, Ltd., and its officers, agents, servants and employees, and those persons in active concert with

them, who receive actual notice of this declaratory judgment and decree by personal service or otherwise, are enjoined from preventing or interfering with the distribution of noncommercial handbills in a peaceful and orderly manner in the malls and walkways within Lloyd Center at times when they are open to general public access . . . ."

The petitioner appealed the judgment to the Court of Appeals for the Ninth Circuit. On May 3, 1971, the day that the case was argued, the Court of Appeals entered an order suspending the submission of the case "pending the allowance or denial of the Petition for Certiorari in the United States Supreme Court in *Diamond* v. *Bland*, 8 Cal. App. 3d 58, 87 Cal. Rptr. 97 (1970), and thereafter, if the petition is allowed, until *Diamond* is decided by the United States Supreme Court." Following receipt of a report that the Supreme Court had denied certiorari in the *Diamond* case, *sub nom. Homart Development Co.* v. *Diamond*, 402 U.S. 988 (1971), the Court of Appeals, on July 7, 1971, rendered a *per curiam* opinion and entered a judgment affirming the decision of the District Court in this case.

REASONS FOR GRANTING THE WRIT

I. This case presents a constitutional question of great importance that has been expressly reserved by this Court.

The question that is squarely presented by the facts of this case is the exact question that this Court noted but expressly stated that it did not answer in *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, *supra*.

In the *Logan Valley* case this Court said:

> "The picketing carried on by Petitioners was directed specifically at patrons of the Weis Market located within the shopping center and the message sought to be conveyed to the public concerned the

> manner in which that particular market was being operated. We are, therefore, not called upon to consider whether Respondents' property rights could, consistently with the First Amendment, justify a bar on picketing which was not thus directly related in its purpose to the use to which the shopping center property was being put." 391 U.S. at 320 n.9.

The District Court acknowledged that in this case it went further than the *Logan Valley* decision. It said:

> "It is true that the Court in *Logan Valley* left open the question of whether the owner could bar picketing which was not directly related to the use of the Center. . . . If *Logan Valley* does not go as far as I suggest, the First Amendment does." 308 F. Supp. at 131.

The proper resolution of this question left open in *Logan Valley* has great significance. The importance of shopping centers and, thus, the public importance of this question is demonstrated by the statistics cited in *Logan Valley*. *See* 391 U.S. at 324. Until this open question is authoritatively resolved by this Court, interested parties are divided into two camps. Shopping center owners and merchants believe that their interest in effective merchandising justifies preservation of their basic property owner's right to control conduct on their land, except only that under the *Logan Valley* decision they may not prohibit picketing and handbilling that is directly related to shopping center activity. On the other hand, people like the respondents claim an unrestricted right to free use of shopping center land for all noncommercial handbilling. They claim that because of *Logan Valley*, all shopping center property is the same as publicly owned property for all First Amendment purposes.

This disagreement as to how the question left unresolved in *Logan Valley* is to be answered has resulted in a considerable amount of litigation, and lower court judges are divided in their interpretations of that decision.

In *People* v. *Sterling* (Illinois Circuit Court for McLean County, March 19, 1970), *appeal pending*, No. 43499 (Supreme Court of Illinois), the court held that a shopping center owner could bar distribution of political handbills that were not related to the owner's use of the land. The defendant was convicted of trespass.

In *Homart Development Co.* v. *Fein* (Rhode Island Superior Court, August 6, 1970) *appeal pending*, No. 1174-A (Rhode Island Supreme Court), the court held that a shopping center owner could bar campaigning by political candidates and enjoined the defendants. The unreported opinion in that case is printed in the Appendix commencing on page 16a.

In *Ball* v. *California* (Superior Court, Appellate Department, Orange County, California, June 28, 1971), *cert. pending*, No. 71-209, the petitioner was convicted of trespass for soliciting signatures on a petition in the parking lot of Disneyland, which is open to general public access without restrictions.[2]

In *Sutherland* v. *South Center Shopping Center*, 3 Wash. App. 833, 478 P.2d 792 (1971), the Washington Court of Appeals reversed a trial court holding that a shopping center owner could bar solicitation of signatures on an unrelated political petition.

In *State* v. *Miller*, 280 Minn. 566, 159 N.W.2d 895 (1968), the Minnesota Supreme Court held in a *per curiam* opinion that a shopping center owner could not bar political handbilling and reversed a trespass conviction.

In *Diamond* v. *Bland*, 3 Cal. 3d 653, 91 Cal. Rptr. 501, 477 P.2d 733 (1970), the California Supreme Court in a six to one decision, held that the plaintiff was entitled

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[2] The Superior Court refused to certify the case to a higher court, and the Superior Court was accordingly the highest court in which a decision could be had.

to solicit petition signatures on the defendant's shopping center land and ordered that the shopping center owner be enjoined from interfering with the plaintiff. In that case the trial court had refused to enjoin the shopping center owner and that refusal had been unanimously affirmed by the three judges of the California Court of Appeals for the Fourth Appellate District. 8 Cal. App. 3d 58, 87 Cal. Rptr. 97 (1970).

The shopping center owner in the *Diamond* case petitioned this Court for a writ of certiorari. Certiorari was denied, *sub nom. Homart Development Co.* v. *Diamond*, with Chief Justice Burger and Mr. Justice Blackmun stating that they were in favor of granting the petition. 402 U.S. 988 (1971). A petition for rehearing, joined in by both petitioner and respondents in that case, is pending in this Court.[3]

The *Logan Valley* decision has thus created a great deal of uncertainty, confusion and misunderstanding. Enormous amounts of lower court time are being taken to resolve these conflicting interpretations. Arrests for trespass are continuing. Handbillers and shopping center owners alike are exposing themself to tort liability for actions that they take in reliance upon their good faith interpretations of the *Logan Valley* decision. The question should be settled by this Court.

II. This important question was wrongly decided below.

The Court of Appeals did not even consider the question that is presented in this case. It failed to recognize any distinction between handbilling that is related to the

[3] We note that in the *Diamond* case there was a question of mootness because the case involved soliciting for a ballot measure in an election which had already occurred. *Cf. Zwickler* v. *Koota*, 389 U.S. 241 (1967); *Hall* v. *Beals*, 396 U.S. 45 (1969). There is no such question here. The judgment in this case is an absolute prohibition, in perpetuity, against any interference by the petitioner with peaceful and orderly handbilling on its land by the respondents or by others.

owner's use of the land and handbilling that is not so related. That distinction, however, is crucial.

In *Logan Valley*, Mr. Justice Marshall, writing for the Court, emphasized that the purpose of the picketing at issue there was to "criticize" the Weis Market and that if the pickets had to stay on public land, the market would "immunize" itself from "criticism." 391 U.S. at 325. If, as in *Logan Valley*, the subject of a handbill is related to the owner's use of the land, it might be necessary for the handbiller to use the land in order to exercise his right of free speech. If it is not related, the message can be effectively communicated to people anywhere and use of the land is not necessary. *NLRB* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956).[4]

Thus, the Court in *Logan Valley* relied on three factors as prerequisites to depriving the property owner of its basic right to control the use of its property. They were: (1) that the shopping center was "the functional equivalent of [a public] business district", 391 U.S. at 318, (2) that the handbilling was directly related to the Weis Market and could be effective only at the doors to that market, 391 U.S. at 321-22. and (3) that it was necessary to permit the invasion of private property at a point 350 feet from the public street in order for the picketing to be effective, 391 U.S. at 323. Had this Court intended to permit all handbilling on private shopping center property without requiring these factors, it could have said so in two or three pages.

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[4] In *Marsh* v. *Alabama*, 326 U.S. 501 (1946), the critical factor was that a contrary holding would have insulated residents of the company town from the privilege of freely exchanging ideas that is guaranteed by the First Amendment. If people lived in Lloyd Center, this company town doctrine might apply. But no one lives there. It is simply an accumulation of private stores where people come for brief periods of time to shop. The petitioner could not insulate these people from communication if it wanted to. Lloyd Center is not like a company town where many people who live there do not go anywhere else.

The material factor in our case that the District Court held to be immaterial, and that the Court of Appeals completely overlooked, was the requirement of a direct relation between the handbilling and the use of the private property.

The Court of Appeals said that it was controlled by the District Court's determination that the petitioner's land was "the functional equivalent of a public business district." It called that a "critical determination of fact." But that determination is not at all dispositive of the question in this case. This Court made the same determination in *Logan Valley*, but it still expressly reserved ruling on the question presented here.

The Court of Appeals also said that its decision was "not an extension of the holdings of the Supreme Court in *Amalgamated Food* and *Marsh*." That statement is patently incorrect. In holding that petitioner must permit handbilling that is not directly related to its shopping center use of the property, the Court of Appeals *did* extend this Court's holdings and thus must have misunderstood or completely overlooked the reservation in the *Logan Valley* decision.

The true constitutional question here is not whether the land involved is the functional equivalent of a public business district but it is whether or not exclusion of the handbillers would "immunize" the owner from "criticism" or otherwise "insulate" people from free communi-

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[5] Even less dispositive, although the courts below apparently attached some significance to it, is the fact that the petitioner invited some activities to its malls to attract shoppers and that once a year it permitted the Salvation Army and American Legion poppie sellers to sit or stand at a restricted number of assigned stations. None of these activities involved handbilling and at most they only support the conclusion below that the petitioner's shopping center was "the functional equivalent of a public business district," a determination which itself, as pointed out above, is not dispositive.

cation and whether use of the land is therefore necessary for the effective exercise of First Amendment rights.

This Court has unequivocally stated that people who want to propagandize or protest do not have a constitutional right to do so whenever or wherever or however they please. In *Adderly* v. *Florida*, 385 U.S. 39, 47-48 (1966), the Court said:

> "The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason, there is no merit to the petitioner's argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this 'area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate . . . .' Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however, and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioners rely on, [*Cox* v. *Louisiana*, 379 U.S. 536, 554-55 (1965); *Cox* v. *Louisiana*, 379 U.S. 559, 563-64 (1965)]. We reject it again. The United States Constitution does not forbid a state to control the use of its own property for its own lawful nondiscriminatory purpose."

Traditionally (and under Oregon law), a private property owner's right to exclusive possession and control of his land is protected by state common law and statutory trespass laws. *Martin* v. *City of Struthers*, 319 U.S. 141, 147 (1942); Ore. Rev. Stat. § 164.460. The rights of private property owners, created by state law, are guaranteed by the Fifth Amendment to the Constitution of the United States. *NLRB* v. *Babcock & Wilcox Co.*, *supra*, 351 U.S. at 112.

In the *Martin* case, although this Court struck down an ordinance forbidding all door-to-door distribution of

handbills, it noted approval of narrower provisions, specifically citing the Oregon trespass statute in support of the following statement.

> "Traditionally the American law punishes persons who enter on to the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states, while similar statutes of narrower scope are on the books for at least twelve states more." 319 U.S. at 147. [Footnotes omitted.]

This Court has thus clearly established the right of a private property owner to control conduct on its land, and certiorari should be granted to review the contrary conclusion of the Court of Appeals.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be granted.

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